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PIONEERS IN CRIMINOLOGY

XIII. Hans Gross (1847-1915)

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I



HANS GROSS

Only about one hundred miles south of Vienna, surrounded by the green hills of the Eastern Alps, you find Graz, the capital of Styria, a province in the south-east of today's Austria. There, on December 26, 1847, Hans Gross, the son of an Army Administration Officer, was born. On concluding his studies at the law faculty he took up court practice in 1869.

In the following year this tall, emotional young man, who was full of ideas, was graduated a doctor juris at his home-town University. The chief object of his further life was practical activity. Thus he became an Examining Justice, first in the industrial area of Upper Styria, the centre of the Austrian iron and steel output, then in a merely agricultural district near the Hungarian and Croatian border.

In those days well-trained criminal investigators were not available in the Austrian small towns and in the country. The Police Forces in both town and country were composed of ex-soldiers who had proved

their moral reliability and physical vigour. Without the aid of any technical apparatus they knew very well how to keep up peace and order by merely applying mother-wit and common sense supported by the authority of the Imperial uniform.

The difficult task of crime detection was to the greatest extent in the hands of specially appointed judges (Examining Justices). These had to solve any criminal case to the best of their ability without those technical aids and appliances which nowadays appear to be indispensable; all they could use was the juridical knowledge obtained at the University and the advice of experienced policemen who had got to know human nature during their service and had also gained sufficient worldly wisdom.

So far Hans Gross had only known the criminals by the few types of juridical abstraction, but now in the small towns and villages he found a life rich in individual varieties he had never thought of. On one occasion he had to expose an impostor who by pretending to be a respectable nobleman had fraudulently obtained a loan and some jewelry from the daughter of a well-to-do citizen; at another time he had to reveal the tricks of a gipsy who acted as a fortune-teller. Using the secret signs left by her accomplices she told a poor farmer's wife what she had to expect from future life and tricked her into giving her the money she had just received for selling a calf in return for her false prediction. Some other day he might have even had to solve a murder case or—what is much more difficult than that—to find out by whom or by what a fire had been caused.

In view of the great number of these problems offered by the practice Hans Gross was shocked to realize that during all the years he spent at the University he had learned almost nothing about how to establish the facts on which he had to base his legal judgment. Even so it is much easier for the judge to qualify a certain criminal conduct as larceny, murder etc. than to establish the facts from which the criteria for larceny, murder etc. result and which lead to the person guilty of the offence.

Being aware of the insufficient practical training the student had received at the University Hans Gross, owing to his industrious character, immediately began to work hard on filling this gap of education. In doing so he was greatly assisted by his capability for concrete reasoning and careful description. From the very beginning he was convinced that the purpose of this task was not only to obtain the necessary knowledge for himself, but to make up a deficiency concerning every law-student once for all.

During many years of devoted spade-work he checked each case he had to investigate on its aptitude for supplying results of general importance. With the same zeal he made each interrogation of a witness or an accused person the subject of a delicate psychological study. At first the attitude of the interrogated person towards his environment and his psychic structure ought to be comprehended, so that the most suitable treatment could be applied in order to obtain the greatest possible amount of useful statements as a result of the interrogation. Generalizing the experience gained from the individual case it was furthermore necessary to find out what psychic influence resulted for any interrogated person from the present significance of the part he took within the legal proceedings. In connection with this he referred to the fact well-known to every practitioner that e.g. a policeman questioning an offender

arrested by him shows a conduct which is entirely different from the one he adopts when being questioned himself as a witness in Court.

During many fertile years of intensive practical activity as an Examining Justice and later as a Public Prosecutor at Graz Hans Gross collected an enormous amount of experience. He very eagerly studied a great number of treatises on physics, psychology, medicine and science in general. He occupied himself with microscopy and photography and took great interest in the development of the X-rays which at that time was in its earliest stage. By studying all these subjects of physical and technical science he tried to find out to what extent they could assist the investigation of crime. Thus Hans Gross founded the "Criminalistics" as a special police science.

II

As a result of his thirteen-year activity along this line his "Manual for the Examining Justice" was published in 1883. It surpassed all at that time existing works by Pitaval (1735-1743), Jagemann (1841), Avé Lallemand (1860) and Lombroso (1878) in respect of number and nature of problems dealt with and in practical usefulness. This was closely connected with the ideas Hans Gross had about the functions fulfilled by the administration of justice.

In his opinion criminalistic activity was pure research work. He regarded a criminal case as a scientific problem which was to be solved by a judge who apart from having attained the highest possible standard of accomplishments had the very best technical aids and appliances at his disposal, the adopted methods being those of the research without suppositions.

The required knowledge could only be obtained from subject literature in the various fields of science which in practice was almost out of the law-student's reach. Sometimes a judge may have taken pains to avail himself of such literature, but even so he was hardly in the position to make use of it as the scientific wording was far beyond easy comprehension. The manual was supposed to help in this respect. The language used by Hans Gross was easily intelligible to anyone of average education.

Offering subject knowledge of particular kind he most elaborately found the right limits to protect the reader from dangerous smattering. With regard to all matters in which it was possible for the judge and police investigator to consult experts, he only made statements of general importance which in spite of their brevity gave full explanation about possibility and extent of the assistance rendered by the expert. With regard to problems of general investigation tactics or activities belonging to the immediate sphere of the investigator he worked out all the details. This fundamental idea commands the whole book.

His manual begins with a minute explanation of personal and material conditions essential to any criminal investigation activity. Objectiveness, diligence, perseverance, knowledge of human nature and love for veracity are the main points of this explanation. After this the two factors taking the most important part in the procedure of securing the evidence are described in detail. In a chapter with a prevalently psychological trend the interrogation is dealt with as the art of utilizing personal evidence. The following paragraphs relate to the inspection which is the base for any positive material evidence.

The foundation for a successful investigation activity thus being laid, the first half of the Special Part deals with the assistance to be expected from experts. Apart from forensic medicine it comprises the subjects microscopy, chemistry, physics, mineralogy, zoology, botany, anthropometry and finger printing. How open-minded Hans Gross was can be concluded from the fact that more than 60 years ago he dedicates a special chapter to the cooperation with the press and its use in crime detection.

The second half of the Special Part describes the individual abilities and accomplishments which the successful Examining Justice ought to possess. It ends with the phenomenology of crime. For Hans Gross it goes without saying that only he can be a successful investigator who is well informed about the criminals' habits, means of communication and methods of operation. He thinks it necessary for the judge to be in the position to recognize the methods used by the criminal for disguising his identity as well as the simulation and the secret means of communication. He does not only introduce the reader to the cant and the so-called "Zinken" (graphic signs of information which were of great importance to the comparatively great number of illiterate persons of those days) but he also demands that investigators and judges should know the elements of ciphering and deciphering codes.

It is of historic interest that with regard to fire-arms he was still unable to mention a particular branch of experts whom the investigators could consult. Therefore in his opinion a judge's general education was to include the field of ballistics which should be as well known to him as drawing, photography, moulding and explaining foot- or tool-prints or detecting and securing blood traces.

The systematic clearness was at first hampered by the huge amount of presented material. Gradually Hans Gross worked out the term "Criminalistics" using it for the first time as a subheading in the third edition of his manual which he called the "System of Criminalistic". The term "Criminalistics" comprised two fields of science which are nowadays considered to be different from each other. It included phenomenology of crime on one hand, on the other Police science. Within the latter he differentiated between Criminal Tactics and Criminalistic Technology.

How far Hans Gross had answered an extremely urgent deficiency by founding this science was proved by the fast spreading of his book. When he died in 1915 the book had been published in seven editions and had been translated into a number of foreign languages.

III

While Hans Gross had originally presumed that the scientific treatment of crime was, itself, a rounded off subject including criminal phenomenology, police science, and criminal psychology, he began to realize as soon as the first edition of his had been published that the psychological problems needed special attention. As the second great result of his scientific work aiming at the improvement of crime detection, a "Criminal Psychology" was published in 1897. It was supposed to become a separate field within the science of the facts of criminal law and should help to get to know the human being and his nature who in Hans Gross's opinion was the most important object of the criminal proceedings.

Even here his basis was not a certain theory. He tried to comprehend the human being's nature without prejudice. He therefore defined the criminal psychology from

a merely teleological point of view as a summary of all subjects of psychology that are necessary for the criminal investigator's work. However much the treatise deals with the psychic nature of the criminal, i.e. the psychic motives leading to crime, it is in the first line dedicated to the psychic facts which are quite generally essential to the criminal proceedings.

The author approaches the problem in question from a rather general point of view. First of all he tries to outline the human being with all his good and bad qualities and anticipating the conceptions of the modern science of expression he dedicates particular paragraphs to dress, physiognomy and expressional power of gestures, especially those of the hand. Then he examines the wide field of perception and the phenomena of will and feeling which take a decisive part in the development of the psychic powers. Reflecting his rich worldly experience the final chapter is a study on the types of reaction within the circle of interrogated persons as obtained by considering sex, age, occupation and habit. In between there are essay-like contemplations on lies, sleep, dream and intoxication which may help to make abnormal conduct comprehensible.

Hans Gross is of the opinion that the same general procedure must be applied to studies in Criminal Psychology as to Criminalistics in the strict sense. The criterion of any progress is careful observation and description of facts and not a daring interpretation of them. He founded many new methods of material evidence, but nevertheless he did not underestimate the great importance which would even in future have to be attached to the evidence given by witnesses. He did not intend to eliminate this prevailing kind of evidence of his time from modern proceedings, but he tried to display its limits and weaknesses clearly.

The Inquisition with its rules of evidence had maintained its position up to those days. The corroboration of a witness's statement by a second witness was thought to be the absolute guarantee for truth. Hans Gross tried to explain that even the honest witness often made untrue statements. Owing to Hans Gross and the studies which were on his initiative made along this line it is today known to any layman that the statements of witnesses must only be used with very great care. Nowadays witnesses are not blindly trusted.

Furthermore the advance to the psychic background of any manifestation and its explanation by a neutral person should provide the basis for the maximum value of the personal evidence. Again and again he points out that the failure of a witness is very often not due to his inability but to unskilful questioning.

Beside an abundant psychology of questioning the book contains an equally careful psychologic treatment of the finding of sentences by judges.

The more Hans Gross was convinced by his many surveys of the various fields of science how helpful the sources were for the detection of crimes, the more he realized that it was impossible for the individual to dig out these unused treasures. The problem could not be solved by accumulating knowledge on the individual which would exceed his powers. A favourable change of fundamental importance could only be expected from a well-schemed team-work of experts.

In the eyes of Hans Gross one of the most important conditions for creating such a co-operation was the existence of an organ for publication with the only purpose of cultivating the scientific studies of crime and the methods of its suppression. This

organ was not at all supposed to serve only his favourite subject "Criminalistics" by which he understood at that time criminal phenomenology, police science and criminal psychology, but it should also make the criminal person as a phenomenon of society and an object of penitentiary treatment the main topic of discussion. It would be wrong to say that Hans Gross deserved the exclusive merit of having developed the science of real facts within the criminal proceedings. Applying scientific perceptions to the judgment of phenomena which had so far merely been considered from juridical aspects, was a feature of those days.

There were the revolutionary theories of Cesare Lombroso in Italy, removing the criminal from the exclusive juridical judgment of that time, and submitting him as a biological fact to a scientific examination. Within the German criminal jurisprudence Franz von Liszt founded a sociological school which demands that when inflicting a punishment more regard should be paid to the person committing an offence than to the offence itself. In his eyes the offender was a phenomenon formed by the environment.

Like Hans Gross he comes from Austria. He was born in Vienna in 1851, his father being Attorney-General. As a young lecturer he worked in Graz from 1876-1878. Since that time the two pioneers of modern criminal law and justice continued co-operating successfully, each attributing decisively to the reorganization of law and its administration according to his individual aptitude.

To whatever extent Hans Gross missed systematic clearness it was supplied by the great scholar of criminal law Franz von Liszt. For the first time he worked out a rounded off system of the entire criminal jurisprudence. Criminalistics in the wide sense as founded by Hans Gross took a firm position as an exact science within Liszt's system.

IV

Hans Gross for his part did not restrict himself to criminalistics and criminal psychology, but he also supplied valuable building-stones for the edifice of criminal aetiology erected by Franz von Liszt which equally considers personal traits and environment. During the time of Adolf Lenz, his successor on the professor's chair in Graz, modern criminal biology resulted from its synthesis.

In the criminal law attention had been drawn away from mere juridical judgment to the human being, unrolling all the relevant problems. It was therefore obvious that also in the course of criminal proceedings greater importance should be attached to the acting person than to the mere juridical procedure. Like Franz von Liszt who had founded a suitable organ named "Zeitschrift für die gesamte Strafrechtswissenschaft" (Journal for the Entire Criminal Jurisprudence) in 1880, which he himself and his collaborators of the "Union internationale de droit pénal" used as their mouthpiece about two decades later, in September 1898, Hans Gross introduced his "Archiv für Kriminalanthropologie und Kriminalistik" (Archives for Criminal anthropology and Criminalistics).

In the introduction he stated that one of the most important tasks of this new Journal was to report on observations with regard to both criminal anthropology and criminalistics, also to collect material, sort it out and check it if and how far it could be utilized for the criminal law. Referring to the disillusionment following

Lombroso's theories which had first been accepted as revelation, he said that these two fields of science were too recent to draw conclusions from the collected material and to deduct incontestable results.

With regard to criminal psychology the most important task of this new Journal was to find out the reasons why out of a number of witnesses, experts and judges each got a different notion of one and the same event. Above all he wished to display the importance of a preconceived opinion and the deception by memory and organ of sense. Last, not least, it was necessary to get to know and recognize the different kinds of deliberate and morbid lying.

In the field of criminalistics the possibilities of employing experts, such as physicians, analytical chemists, physicists, zoologists, botanists, mineralogists, microscopists, photographers, handwriting and ballistic experts or artisans, were to be pointed out. But also the lawyer should get a hearing. He was to inform the experts about problems occurring in practice and to report about possibilities of improved crime detection resulting from the interchange of experience with representatives of other branches of science.

By the time of his death in 1915 sixty-five volumes of the Archives had been published. At the present time the Journal is being edited by Robert Heindl and amounts to 117 volumes. Since the death of Hans Gross it has simply been called "Archives for Criminology".

All this scientific pioneer work of unique standard was achieved by Hans Gross while performing his duties as a judge and public prosecutor. He did not retire until he was 51 years old. After this he wholly devoted himself to his scientific research work.

Although never having taught at Universities before he was in 1898 appointed a Professor in Ordinary for Criminal Law and Justice Administration at the University of Czernowitz which at that time was Austrian, but is today situated in the Soviet-Union. Five years later he was called to the University of Prague where he worked in the same capacity for two years. In 1905 he returned to Graz to hold the chair at his home-town University. His scientific activity here was of such successful nature that his name became well-known far beyond the borders of his home-country.

In those days his greatest wish was to elaborate the Archives for Criminal Anthropology and Criminalistics which had quickly spread beyond the frontiers of the German-speaking countries. Owing to his teaching duties he paid increased attention to Criminal Law and Justice Administration.

His mind being occupied with dogmatic and criminalistic problems as well as with criminal policy the book on "Rarity Fraud" which was published in 1901 must be called a peculiar result of this combination of thoughts. Here he had a chance to prove himself a great judge of arts. This book was also supposed to show what impulses the criminal policy was able to gain from a deep-seated knowledge of the facts which were to be ruled by the law.

His last fundamental treatise was dedicated to the medical expert. A volume of almost one thousand pages was published in 1908 with the heading "Criminalistic Activity and Position of the Physician". He informed the medical expert about the aid he could get from modern criminalistics and psychology when working out his diagnosis. Whilst the manual was meant for the Examining justice to draw the lawyer's attention to the expert's work, the purpose of this book was vice versa. The

expert should learn what aid he could possibly expect from the lawyer and to what extent the lawyer counted on him.

V

Owing to the open-mindedness of the Austrian Education Authorities his lifelong work was somehow crowned when he succeeded in opening a Criminalistic Institute at the University of Graz in 1912. For the first time a University Centre for teaching and research purposes had thus been founded at which all problems raised by the crime and the necessity for its prosecution were scientifically administered. The new Institute was a full success.

Primarily it served the cultivation of those auxiliary fields of science which are in direct connection with the Criminal Law. Propaedeutic lectures were held there for law-students within their general course of studies at the law faculty. They dealt with individual and social causes of crime, i.e. criminal biology in today's terminology; further subjects were psychology of criminal proceedings, criminal statistics and criminalistics as phenomenology of crime and police science. In addition periodic courses were held with the purpose of promoting the practical training of all police and court personnel being employed in the prosecution of crime.

At the seat of the Institute an instructive collection of criminologically important objects was established. It comprised the criminals' secret means of communication, the signs of their superstition, the tools of their criminal activity, the traces of their presence and the signs of their occupation in prison. Thus the collected material was of great visual aid for criminological research work and instruction.

Attached to the Institute was a department of evidence which soon was regarded as a model by all Institutes for Investigation dealing with modern criminal technique. It soon became an important aid in all problems of tracing science especially with regard to comparison of writings, forgery and identification of arms and burglary tools: In this way a bridge was spanned from science to practice as a result of which both spheres of interest and activity took alternate advantage.

The plea made by Franz von Liszt and Hans Gross for adding the science of the facts of crime and punishment to the University law studies soon became a common part of the Austrian criminal jurisprudence. The law faculties of the Austrian Universities, especially the University Institutes of Criminology at Graz and Vienna, deal with criminal phenomenology, criminal tactics, psychology of criminal proceedings, police science and with all those subjects which are summed up by the term "Criminology" in America.

The development started by Hans Gross was to some extent of basic importance to Austria as the Examining Justice was kept in office by our legislation in respect of felonies and besides, in the large towns where special Police Forces were organized, lawyers were put in charge of all affairs of criminal investigation. In this way there are, e.g., within the boundaries of the Vienna Police Headquarters about 150 lawyers apart from about 1,000 CID-men employed in the prosecution and prevention of crime. They all owe their elementary preparation for criminalistic practice to the fundamental ideas of Hans Gross.

VI

The particular gift of Hans Gross was to find out with astonishing reliability if and how far his practical and theoretical experience was of general use to the detec-

tion of crime and treatment of human beings. Any walk, any talk with a neighbour, no matter if senior or junior in rank, workman or fellow-traveller, and any production of fine arts or literature was a useful impulse to him. In all his books there is no sign of boring theory, but a constant flow of immediate experience.

Hans Gross depended on self-instruction. He never tried to achieve a rounded off system of his science, but was primarily busy collecting experience which should help him and his learned friends to master the difficulties resulting from insufficient training for criminalistic practice. During 30 years of his occupation as a judge, which he concluded as the chairman of a Senate at the Appellation Court in Graz, he introduced a full generation of young judges to his science of facts. To them he was less a teacher than a fatherly friend. His books are not written by a pedant school-master, but are at every possible opportunity illustrated by interesting examples. Whoever reads them is in the happy position of gaining a generous insight into the treasures which a successful collector concentrated in the course of his life.

When Hans Gross died on December 9, 1915, he left his science to us as a firmly established edifice. It resisted all the tempests of time, and today, 40 years after his death, criminalistics is undividedly recognized in theory and practice. It is the hope of any wrongfully suspected person and it is feared by any offender conscious of guilt.

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