

1917

## Reviews and Criticisms

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## REVIEWS AND CRITICISMS

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DELLA TRUFFA E DI ALTRE FRODI (SWINDLING AND OTHER FORMS OF FRAUD). By *Alberto Domenico Tolomei*, Athenaeum, Rome, 1915, pp. XV, 576.

This book is an important addition to the series of legal and economic treatises (Collezione di opere Giuridiche ed Economiche). It is of interest both as a compendium of comparative legislation and legal theory, and as the exposition of a thesis in positive criminology. Following the well known positions of Ferri and Sighele his general proposition is that criminality mirrors the diverse aspects of the struggle for existence; hence that fraud is the characteristic mode of modern or evolved criminality in contradistinction to violence which is the mark of primitive, retarded, or atavistic cultures. The author betrays his genuine predilection for the scientific background of social fact in legal questions in his handling of the problem of what we might call 'absolute criminality.' That problem usually occurs in this form: Is it true that progress in civilization means actual decrease in delinquency or only a transformation in the modes of criminality—a mere change in color not in quantity, as Niceforo and others have insisted? Tolomei denies this latter contention not only as paralyzing all wise effort to improve but also as untrue to fact, and brands it as sentimental Marxian pessimism. For his facts he appeals to Italian official statistics. These pretty conclusively show that in that country at least serious crimes against the person have been decreasing. But those against property tend to increase: for example, the rate of swindling rose from 58.35 per 100,000 in 1887-1889 to 68.73 per 100,000 in 1907. In these figures he finds reason for satisfaction, for he approves of Ferrero's maxim that fraud however repugnant in itself is a benediction of God when it eliminates violence, when it makes gold run where blood ran before. As to the causes back of the increase of property crimes we cannot say that the book is altogether exhaustive. In general the author fixes upon city life and modern industrialism as chiefly responsible. He examines Marro's and Lombroso's anthropological studies of swindlers and rejects them as unsatisfactory and unconvincing. He is forced back upon social causes. Examining still further the statistics he finds that four-fifths of all swindlers are males, preponderantly of mature age, i. e., 30 to 50 years old; 30 per cent. are illiterate; and the great majority come from manufacturing, commerce, agriculture and cattle raising.

The larger part of the book is given over to summarizing the treatment of swindling in the past. The laws of Babylon, Mexico, Persia, Egypt, Israel, Arabia, India, Greece, Rome and modern Europe are effectively analyzed, with an abundant citation of authorities. From the study of current law the reviewer picked out the sections on fraud in insurance and emigration as of particular interest. In his conclusions the author criticises the existing Italian code as relatively too severe on certain kinds of fraud; expresses sympathy with the views of Carrara who accuses such laws of turning poverty and hunger into

crime; and seems to lean toward the spirit of the famous English judge who asked, "Shall we indict one man for making a fool of another?"—not of course in any naive sense, but rather by way of a plea for the 'disinherited,' the Have-Nots.

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ARTHUR J. TODD.

A SCHEMA FOR THE PSYCHOLOGY OF TESTIMONY. By *Dr. E. von Kármán*. *Archiv für Kriminal-anthropologie und Kriminalistik*. Band 61, 2. Heft. 1915.

A twenty years' accumulation of data in this field has failed to yield anything of immediate practical value to the court. The author therefore attempts to indicate in this article the subjective psychological background in testimony and to outline a scientific procedure for determining the validity of an individual's report. Von Kármán admits that this suggested outline makes no claims at completeness but merely touches some of the high spots.

Personal trustworthiness and the objective truth, the "head and tail" of the problem, must first be differentiated. An analysis of the former suggests three main lines of inquiry:

- (a) An inquiry into the exactness of the testimony,
- (b) An inquiry into its accuracy,
- (c) An inquiry into its truth.

The first two are subjective, the last is objective.

(A) *Exactness*: I. Influenced by the physical and mental health of the subject. (1) *Physical*: (a) physical defects such as blindness, deafness; (b) minor or partial defects in the various sense capacities, head injury, color-blindness; (c) pathological manifestations of hyperesthesia and anaesthesia; (d) in women, the appearance of menstruation, menopause, and pregnancy; (e) in children, arrested physical development; (f) in old people, somatic degeneration.

(2) *Mental*: (a) Mental affections; (b) neuropathic, neurasthenic, hysteroid states, nervous irritability, hypersuggestibility, tendency toward hallucinations; (c) arrested mental development, mental degeneration.

(A) *Exactness*: II. Influenced by any maldevelopment leading to illusions of sensation, and to improper temporal or spatial orientation.

(A) *Exactness*: III. Influenced by the subject's mental state, (intellectual or emotional), at the time of an occurrence. The higher thought processes and emotional states are alike detrimental to exact report. Therefore, "a common farmer, aimlessly wandering about a city's streets, is undoubtedly a better witness than a professor wending his way home from the university." Sometimes, however, the emotional element assists exactness by focussing greater interest upon the object.

(B) *Accuracy*: This relates to the reproduction of past experiences.

I. Memorial accuracy is favorably influenced by mentally re-experiencing the situation sometime before being requested to report; un-

favorably influenced by varied testifying, and by being frequently cross-examined.

II. Memorial accuracy unfavorably influenced by linguistic factors, such as the subject's paucity of ideas, the incompatibility between the subject's and the examiner's terminology and understanding of common words and terms. In such cases the liability of succumbing to questions which act as suggestions is greatly increased. One who is over-talkative is inclined to sidetrack the main details, warp the occurrence, and be easy prey for questions of a suggestive type.

(C) *Truth*: After finding that the above-mentioned dangers had been avoided the content of the testimony must then be examined. This is an objective matter. In the first place, the actual facts of the occurrence, all possible evidence must be at hand. Controls and checks on both the physical and psychical aspects of the event must be made.

In concluding, von Kärman wishes to make himself clear regarding such evidence, the value and importance of which may appear exaggerated in his paper. We are requested, for example, to consider a case of assault and battery. "The witness maintains that he saw the defendant strike the plaintiff on the head. This statement is verified by actual evidence on the scalp and skull of the plaintiff. Now, all we dare say is just this: The chances that the witness actually saw the blow delivered are great, but it cannot be accepted by the court as an absolute certainty." (Translation liberal).

Although many excellent suggestions are made, one cannot help gaining the impression that the author has greatly labored his article with an ill-fitting classification. The article could be extended and expanded to great advantage, and with more of psychological and psychopathological detail it would make a truly valuable contribution to the literature.

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SULL OMICIDIO IN ITALIA DAL 1881 AL 1911. (HOMICIDE IN ITALY FROM 1881 TO 1911). BY *Alfredo Spallanzani*. *Rivista Penale*, January-February, 1916, pp. 162-197.

This is a very careful and critical study of judicial statistics of crime. It is valuable not only as a summary of the movement of homicide in Italy for the past thirty years, but also as a critique of statistical methodology. The author admits the discrepancies between published figures and the real subjective phases of crime, but contends that on the whole objective statistics of homicide may be taken as an approximation to truth. The larger part of his article, however, is devoted to pointing out these discrepancies. For example, if you compare the accusations for homicide with convictions and sentences during the quinquennium 1896-1900 the official figures show that 22.93 per cent (an average of about 857 cases per year) of charges did not result in conviction; that is, apparent exceeded legal homicide by about one quarter. But of the total reputed homicides, 5.35% were declared not to be such at all or involved no crime; 17.58% (or some 657 per year) were

at some stage of the proceedings changed in name, that is, graded either up or down the scale of gravity. Hence, as might be expected, the inference that the Ministry of Justice seldom errs in asserting that a real crime has been committed, but fails frequently to designate that crime properly. Under the general heading "homicide" fall a diversity of offenses, including murder, accidental homicide and attempts. The following tables illustrate certain defects in the statistics of the Ministry which render them almost worthless for exact comparisons.

(II)			(I)		
YEARLY AVERAGE OF CON- VICTIONS, 1896-1900.			YEARLY AVERAGE OF ACCU- SATIONS, 1890-95.		
	Total.	Per Cent.		Total.	Per Cent.
Murder . . . . .	1,699	58.99	Murder . . . . .	1,907	47.46
Accid'l homicide..	463	16.08	Accid'l homicide..	230	5.73
Attempt, etc. ....	718	24.93	Attempt, etc. ....	1,881	46.81
	2,880	100		4,018	100

(III)

HYPOTHETICAL DISTRIBUTION OF CASES COMPARED WITH  
ACTUAL CONVICTIONS, 1896-1900.

	Total.	Per Cent.	Total Convictions.
Murder . . . . .	1,744	47.46	1,699
Accidental Homicide .....	214	5.73	463
Attempt . . . . .	749	46.81	718
	3,737	100	2,880

Tables I. and II. show clearly that for murder the legal varies but slightly from the apparent rate; for accidental homicide the legal rate is much higher than the apparent, while for attempts the apparent nearly doubles the legal rate. Table III. is derived by applying to the total average annual rate of homicide for the years 1896-1900 the percentage distribution of types as worked out for the preceding quinquennium, and by comparing these derived figures with the actual recorded convictions for the same period. These figures show some discrepancy between accusations and convictions for murder (4.23%); but an immoderate gap between accusations and convictions for accidental homicide (116.35%) and for attempts (58.95%).

Such gaps may be accounted for in terms of medical uncertainty as to real cause of death or in terms of legal definition of crime; but however they are accounted for they are manifestly so large as to render statistics of information or indictment an unsafe measure of the real movement of criminality.

Moreover, gross discrepancies occur between the returns from the Ministry of Justice, the police and the examining magistrates. For example, taking the figures of 1906 as a base of 100, the figures for homicide in 1911 in northern Italy dropped to 94 according to the Ministry, to 79 according to the examining magistrates; in Sicily the one reported an increase to 113, the other to 115; in Sardinia a drop

to 73 as against a rise to 105; in southern Italy a drop to 95 as against a rise to 134.

Hence the author discards the statistics of informations and indictments and turns to these of court decisions. But unfortunately they are incomplete, and, because they do not synchronize with the commission of crimes, do not offer a very sensitive measures of the crime rate. By a process of elimination, therefore, the writer finds his only really usable data in the reports of examining magistrates. The discrepancy between them and the decisions of the courts is comparatively slight, and their closeness in point of time to the actual commission of the offense confers upon them real value as registers of the seasonal-movement of criminality.

Using these figures in comparison with those derived from other sources the author concludes, and his conclusion seems altogether justifiable, that in the last thirty years homicide has declined notably, both relatively and absolutely in Italy. With only one exception or apparent exception, the rate declined steadily from 1881 to 1911. That exception occurred during the years 1908-10 and was particularly marked in southern Italy. No clear explanation of the phenomenon is offered. The procurators, while they noted the apparent increase in violence, gave no precise reasons for it. The only exception was the procurator general of Trani, who in his statement for 1909, suggested that the increase in his district was due to the economic crisis of that year, which resulted in turn from the extraordinary drought of 1908, the scarcity of capital, diminution of agricultural employment, and the rancors and frictions of a political campaign. But here as elsewhere popular sentiment seems to have exerted pressure upon the agents of justice to make a showing of activity perhaps quite out of proportion to the real state of criminality; for the actual convictions by no means reveal a correspondingly large increase. At any rate they do not affect noticeably the general tendency of the homicidal impulse to decline.

The following table shows this decline, based upon the returns from examining magistrates.

(IV)

Years.	Actual Number	Relative Number	Per Cent of Every 100 Crimes Recognized by the Code	No. of Homicides Per 100,000 Population Over Nine Years
1881-3 .....	4,568	100	2.33	20.26
1884-6 .....	4,209	92	2.19	....
1887-9 .....	3,976	87	1.91	....
1890 .....	3,102	..	..	....
1891-3 .....	3,487	76	1.43	14.55
1894-6 .....	3,380	74	1.30	....
1897-9 .....	3,225	71	1.18	....
1900-2 .....	2,757	60	0.88	10.86
1903-5 .....	2,706	59	0.84	....
1906-8 .....	2,545	56	0.81	....
1909-11 .....	2,520	55	0.69	9.23

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PROBLEMS OF JUVENILE CRIMINALITY IN FRANCE, OCCASIONED BY THE GREAT WAR. *Revue pénitentiare et de Droit pénal*, Avril-Mai, 1915.

At meetings of the Comité de défense des enfants traduits en justice de Paris on April and May, 1915, certain problems touching the proper tribunal to handle cases of juvenile law-breakers came before this committee for discussion. One of these problems relates to the handling of minors who come before the Councils of War. In this discussion it came out that the military legislation and the law of 1912 conflict on several important points relative to the competence of the civil and the war authorities to handle juvenile cases. In other words, the changes made in the procedure of handling juveniles as the result of the development of juvenile courts in the various countries of the world were such that they do not accord with the procedure in time of war. In this discussion an effort was made to divide the juvenile cases so that certain of them would be handled by the Councils of War and others by the civil authorities. The difficulty of adjustment lay in the fact chiefly that the courts for children in France have always the right to come back to the decision originally made by the court and modify it in whatever directions are necessary for the proper disposition of the case. The problem of course becomes more complicated when the child has been taken provisionally and for a definite time under supervised liberty. As a result of the discussion the following resolutions were adopted:

1. Minors from thirteen to eighteen years are to come under the jurisdiction of the Council of War in the cases provided by the law.
2. The Councils of War must observe as far as possible the rules of procedure established by the law of July 22, 1912, for minors.
3. The military tribunals are to apply to minors the penalties and special measures provided by the laws which concern them.
4. If the minor is held under supervised liberty, the Councils of War of the interior must supervise the execution of that measure.

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