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Editorials

Willem Adriaan Bonger

On May 15, 1940, the distinguished Professor Bonger, of the University of Amsterdam, passed away. He was prime leader in criminology in the Netherlands, successor in eminence to George VanHamel, one of the great triumvirate who founded the International Association of Criminology more than half a century ago.

He was born September 16, 1876; and graduated at the University of Amsterdam in 1905; specialized from the first in criminal sociology with a dissertation on Criminality and Economic Conditions. This monograph was enlarged into a treatise and was published in the United States in 1916 in an English translation, as a volume in the Modern Criminal Science Series, under the auspices of the Association of American Law Schools (Boston, Little Brown & Co).

The author was married in 1905 to Marie Hendrika van Heteren. From 1905 to 1922 he was director in an insurance association. Meanwhile he continued his researches and publications in criminology:—"Evolution and Revolution," 1919; "Property and Income in War-Time," 1923, and numerous periodical articles.

In 1922 he was appointed Professor of Sociology and Criminology in the University of Amsterdam, and held this position until his decease. Meantime he was active nationally in many aspects of practical science— founder of the Netherlands Sociological Association; Editor-in-Chief from 1915 of the *Sociological Guide;* Editor of *Men and Society* (the Dutch sociological review); member of the Central Statistical Bureau, the Psychopathic Council, the Economic Council, and the Netherlands Railway Board. In 1934 he published "Religion and Irreligion in Netherlands," and in 1933 the crowning results of his his life-study; "Introduction to Criminology," translated into English in 1936 (London). His final monograph, "Race and Crime" (Haarlem, 1939), was a revealing study of statistics showing the relative behavior of race-stocks. A translation is now in preparation.

Among the criminologists of the passing generation he stands out as a preeminent specialist in the sound analysis of statistics, and the leading exponent of the philosophy of crime as a social and not a biological phenomenon.

JOHN H. WIGMORE.

CRIMINAL PROCEDURE BY RULES OF COURT

All criminologists, of whatever breed —lawyers, judges, sociologists, police, psychiatrists, penologists—will applaud the passage by the Federal Congress of Public Act No. 675, approved June 20, 1940—an Act empowering the Federal Supreme Court

"To prescribe rules of pleading, practice, and procedure with respect to proceedings in criminal cases," etc.

This Act represents the most notable forward step for a century past—or more—in the rationalizing of criminal procedure in the United States. It parallels and supplements the pioneer Federal Act of June 15, 1934, recognizing like power for civil procedure.

The new Act forecasts two particular benefits to criminal procedure:

First, it will make uniform, in all fundamentals, the procedure in criminal prosecutions throughout the Federal Courts of the Union. Such uniformity will supplant the diversity which now impedes efficiency.

Second, it will be based on progressive principles, and will thus serve both as a standard and an invitation to all State Legislatures to revise their criminal practice on the Federal model. Do not the State Legislatures (and Bars, too) all need to be jolted into movement in this field? The new Federal Rules will of course (presumably) use the Criminal Code of the American Law Institute as textual starting point. That Code, published ten years ago after years of careful preparation, had received scanty legislative attention in the States. Now, however, the State Legislatures and Bar Associations will not be able to resist the pressure to go and do likewise. This is what is already happening in the field of civil procedure in the States which had not (like Illinois) anticipated the Federal Act of 1934.

The arrival, in full victorious panoply, of the idea that judicial procedure should be formulated by the judiciary themselves is now the most notable feature of law reform of this first half of the 1900's. Nearly thirty years ago, when the American Judicature Society was founded in Chicago by Herbert Harley and a dozen of his Midwest professional associates, this idea of transferring rules of judicial procedure from the Legislature to the Courts was one of its fundamental postulates. But it was then only a juristic dream. One way or another, however (and mainly by receiving the powerful backing of the American Bar Association), the idea has come to receive, first, tolerance, and finally conviction, in the legal profession. The last stage of hesitation disappeared when in the civil field the Federal Rules of 1938 (composed in pursuance to the Act of 1934) were promulgated and received general professional approval.

After that success it was relatively easy to proceed to the conquest of the field of criminal procedure. But the credit of leadership must here be given to Attorney-General Homer Cummings, who in December, 1938, in the Journal of the American Judicature Society (XXII, 151) published his eloquent invitation to the legal profession to turn next to reform in the field of criminal procedure, by recognizing the rule-making power of the courts. There followed the introduction in the Congress of the bill drafted in the Attorney-General's Office. It was this bill which became a law on June 29, 1940.

Its terms are as follows:

> "Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Supreme Court of the United States shall have the power to

prescribe, from time to time, rules of pleading, practice, and procedure with respect to any or all proceedings prior to and including verdict, or finding of guilty or not guilty by the court if a jury has been waived, or plea of guilty, in criminal cases in district courts of the United States, including the district courts of Alaska, Hawaii, Puerto Rico, Canal Zone, and the Virgin Islands, in the Supreme Courts of Hawaii and Puerto Rico, in the United States Court for China, and in proceedings before United States commissioners. Such rules shall not take effect until they shall have been reported to Congress by the Attorney General at the beginning of a regular session thereof and until after the close of such session, and thereafter all laws in conflict therewith shall be of no further force and effect.

"Approved, June 29, 1930."

3. Pursuant to this Act, the Supreme Court, by an order of February 3, 1941, while declaring that itself "will undertake the preparation of rules of pleading," etc., in criminal cases, has appointed an Advisory Committee "to assist the Court in this undertaking," and to "submit a draft of rules." Herein the honorable Supreme Court followed the plan used by it for civil procedure under the Act of 1934. The personnel of this Advisory Committee, as named in the Court order, is as follows:

Arthur T. Vanderbilt, Newark, New Jersey, *Chairman.*

James J. Robinson, Professor of Law at the Indiana University Law School, *Reporter.*

Alexander Holtzoff, Washington, D. C., *Secretary.*

Newman F. Baker, Professor of Law at the Northwestern University Law School.

George James Burke, Ann Arbor, Michigan.

John J. Burns, Boston, Massachusetts.

Frederick E. Crane, New York City.

Gordon Dean, Washington, D. C.

George H. Dession, Professor of Law at the Yale Law School.

Sheldon Glueck, Professor of Law at the Harvard Law School.

George Z. Medalie, New York City.

Lester B. Orfield, Professor of Law at the University of Nebraska Law School.

Murray Seasongood, Cincinnati, Ohio.

J. O. Seth, Santa Fe, New Mexico.

John B. Waite, Professor of Law at the University of Michigan Law School.

Herbert Wechsler, Professor of Law at the Columbia Law School.

G. Aaron Youngquist, Minneapolis, Minnesota.

That this roster guarantees a draft that will be progressive yet not too advanced for acceptance, uniform yet based on varied regional experience, systematic yet not academic, will be apparent to all persons familiar with recent activities in the field of criminal law. That its task may be performed and achieved with harmony, courage, and high wisdom must be the earnest wish of all criminologists.

John H. Wigmore.

PSYCHIATRIC REPORTS, IN COURT

The paper in this issue by Dr. R. M. Patterson, of Michigan, page 682 deserves comment because it clearly summarizes the evolution of the overlap of law and psychiatry in the criminal court and because it describes Michigan's advance step which is encouraging and in line with the desires of many.

A tide advances by waves which creep up some and recede less as the water finds new levels. Michigan's law is such a wave. Wherein it has enduring merit it will survive; wherein it may fail because of the frailties of human nature or wherein human nature will fail to support it perfectly, it must recede. May we here and now attempt an appraisal?

Because so much of a psychiatric report includes hearsay and other non-evidentiary matters and may include self-serving statements; because the human factor creeps into every situation, in contested cases (e. g. alleged yet denied cases of rape, etc.) it does seem inadvisable to rely too wholly on the Court psychiatrists' written reports and to discard the time-tested technique of direct cross examinations which rather well separate the wheat from the chaff. A report from an expert or a board of experts which can not stand up under the three examinations in the court (direct, cross, and the Court's) is presuming too much in determining culpability, whereas a later report reviewed by an entire Board of Pardons and Parole is warranted as it is frankly an opinion or diagnosis-prognosis and is not presuming to establish a debatable fact. Psychiatrists should not ask immunity for themselves from explaining and defending their thesis in open court. Since every examination must in the nature of things be incomplete, and since no one person can be assumed to be perfectly correct in his weighting of data, it is not discreditable that there be some confusion and contradiction in testimony of experts.

Medicine, psychiatry, may properly be used to help the law but in its adolescence must not displace the law nor arrogate unreviewable infallibility to itself. In our culture the law is still, and we think properly, the last word in dealing with human conduct and misconduct. It is the last word but need not be the sole word.

Therefore Michigan, its legislature, its courts, its court officers, its boards, its state institutions, and its psychiatrists are to be congratulated for their progressiveness. We will watch with interest how well or poorly this method works out in the next dozen or so years; we shall see its successes, its failures, its limitations, and its developments. Fifteen years should tell the story. It may be that, like the Briggs law of Massachusetts it will succeed as long as its sponsors vitalize it.

HAROLD S. HULBERT.

MORALE FOR NATIONAL DEFENSE

Now and always is the time to strengthen our morale as a measure for defense against evil forces that threaten us from without and from within. Old

means must be adapted and new ones invented for cultivating the homely virtues that add up to make strong personal character and to elevate morale.

More particularly National and State morale is in the foreground of public attention and must have our eternal vigilance. Democracy is being challenged. There are disturbing signs on many sides that the old faith in the "American way" trembles in the scale. At whatever cost confidence in this greatest device that was ever created for men and women who have to live together must be maintained. Our system of government is "for the people"—Gentile or Jew, white or black, rich or poor, upper or lower crust. We needn't go far for materials to support that proposition.

State and National archives are filled with many hundreds of thousands of dramatic case-histories of men, women and children for each of whom *personally* government has laid itself out. What is asked of each one in return? "Act Justly." No more. A huge portion of every tax dollar continues to go into the services that are represented in these records. The material falls into a hundred categories. Related data are as numerous as grains of wheat in a field.

Why did representatives of a State government, over a period of eleven years, keep in touch with behavior-problem Phil who was at the outset generally conceded to be headed for the State Reformatory or a Mental Hospital? Why did they goad and steer him along, building his character and inoculating him with ambition and self-pride until he became a practical mechanical engineer, and until *on his own initiative*, he landed nine hundred miles from his home in a post of considerable responsibility? Why? Because "by the people" a government had been created, and because that government had, from time to time, been authorized to work for Phil and his sort and others without number: to work "for the people" individually and collectively to the end that they may become self-sufficient and eager to make out their own salvation even at the risk of losing an Emergency Relief check by accepting a real but temporary job!

That's an ideal that lies back of our American pattern of government. The life-story of Phil makes it personal. It's through personalities, what they are doing, and what is done to them that young and old become attached to causes. That attachment doesn't come to pass by studying blueprints and graphs. Phil's case is only one of thousands and thousands of varied flesh-and-blood illustrations of governmental activities and functions that belong to American democracy.

This is the kind of thing that must supplement and vitalize the discussion of government in the press, over the air, on the platform, in adult education classes, and, most of all, in our homes and in every grade of academic instruction that is concerned with government. Selfishness, crookedness, rottenness are played up so much that, as one Social Scientist has said: "Students easily get the notion that all government is so. It is difficult to dispel this idea."

Realization of the personal services of government that are on every side of us arouse in us a sense of great pride in our American democratic order. Therein is National strength—morale—*our strongest defense* against dangers that threaten us from without and from within.

When our National and State pride or morale is at high pitch we are slow to violate the peace and order of our City, State, Nation. That's how we come, by one important route, to the prevention of anti-social behavior, delinquency and crime and to the correction and rehabilitation of those who have gone wrong.

ROBERT H. GAULT.

FROM DAPHNE DU MAURIER IN "COME WIND COME WEATHER"

"Two thousand years ago the peoples of the world were told: 'A house divided against itself cannot stand.' The undying truth of this saying has been proved in full and unhappy measure in our world today. A nation is not a tangible thing, not a building of bricks and mortar that will crash to ruins at the first strong blow. It is an echo of the past, and a whisper from the future, the whole bound together with the lives, the hopes and endeavors of many millions of men and women.

"The strength of the nation is the morale of the people, and it is only when their hearts fail them and they permit the Fifth Column of Doubt, Suspicion, Personal Safety, and most insidious spy of all—Indifference—to invade the citadel, that the nation will crumble. It is not only the enemy from without that the men and women of our country have to defeat—but the enemy from within. The secret of high morale lies in personal victory over every selfish thought, every narrow prejudice that creeps stealthily into our hearts and minds in time of trouble."