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CRIMINAL PROPHYLAXIS AND PROTECTION IN EMERGENCY TIMES

W. Eliasberg

The author of this paper, who in 1933 published a book on Psychology and the Administration of Law and in 1936 a textbook of Propaganda, had ample opportunity to see the workings of propaganda and political criminality in Germany and Austria. His recommendation of political linguistics in the prevention of anti-democratic criminality and group identification is intended to make it more difficult for this type of criminal to slip through the fingers of the law.—Editor.

Prophylaxis is the oldest method in criminal tactics. It was applied by the ancient peoples as it is believed in by many penitentiary wardens and even probation officers of our times. Among prophylactic methods, visible harshness in punishing is still preferred, but the war, as it does away with so many antiquated prejudices and methods, has proven the insufficiency of mere harshness.

Whether war-time criminality in general changes or not, it is important that certain extremely dangerous crimes increase. Among these are rumor spreading; undermining the loyalty of soldiers, sailors, and marines; prevailing upon men in crowd situations or workers in war plants not to fulfill their duties, nor to cooperate in war work; leading people to divulge secrets; to commit sabotage against installations, or assault and battery and murder of key personalities. We still have (a) to examine the types of crimes that in the actuarial approach, as it is called, increase conspicuously in wartime, (see footnote 13), we will have (b) to show that the methods of criminal investigation in practice and theory are in no position to offer that protection which society may demand in war-time or in emergencies, and we will see (c) that the social psychology of group life in emergencies, and the changes in individual group relationships may account for the changed type of criminality and may, therefore, offer clues for prophylaxis. In order to avoid becoming repetitious, however, we will not keep these three points separated.

We have been boasting of the individualism of our century and we profess to be convinced that democracy rests on the main pillar of the individual, so that, in the long run, "a State," as John Stuart Mill in *On Liberty*, 1859, said, "which dwarfs its men, in order that they may be more docile instruments in its hands . . . will find that with small men no great thing can really be accomplished." "The worth of a State in the long run, is the worth of the individuals composing it."

Our Civilization Rests on Groups

While we have been professing these beliefs, we have not become aware of the fact that the foundations of modern life

were changing. Industrial civilization is no longer based on rugged individualism though hired stump oratory still wants us to believe in it. Industrial civilization rests on masses. It gives strength to group life. Industrial civilization does not buttress the idea of the democratic state as an organization to "establish justice, to insure domestic tranquility and secure the blessings of liberty." The human factor in industrial civilization is reached, for all practical purposes, as the member of one or more groups. The second half of the 19th century has seen the awakening of the masses, their revolts, the myths of the masses, and finally the formation of masses through propaganda. Sociology itself, as the German social philosopher Simmel said, is the reflection of the impact of the masses on scientific thinking. It is a fact that the social psychology of the mass resembles much more that of primitive tribal life, than that of a rational organization. Conspicuously the group does not tolerate other Gods. "Thou shalt worship no other God." This word, spoken to a tribe in the desert, moves again the industrial, propagandistically excited, masses and youthful gangs of our times.

The democratic state, contrariwise, and the democratic administration, are built on relativities, on if's and when's, on hypothetical cases and applications of the law; carrying on the democratic way needs abstract thinking more than emotional ties both on the part of the rulers and the ruled.

At first glance it might seem paradoxical that at a time when in Europe group life increases, the democratic state has been on the decline. The reason can be found in the facts which we enumerated. We do not overlook that in the United States this development has been counterbalanced by other forces. The United States stretches out into the four quarters. There is an Arctic North and an Equatorial South; there is an Atlantic and Pacific shore; there are not only classes but also racial groups whose melting and assimilation has been delayed for generations; there are political machines helping the underdog, the underprivileged, through corruption, to be true, but still contributing towards a kind of Underground New Deal. There are, finally, hopes held out to every child who works his way through our educational system; he is brought up in the ideals of that gentle individualism which at the same time, helps the neighbors and "roughs it."

Among the newcomers in the United States those whose original country is at present at war with the United States offer a special problem. The German, and, to a lesser degree, the Italian and certainly also the Japanese propaganda have been directed specifically to stress the loyalty toward the fatherland¹

¹Material for this may be found in *National Socialism, Its Basic Principles, etc.*, edited by the U. S. Dept. of State, Washington, D. C., 1943; see also Michels, Robert, *Der Patriotismus, Prolegomena zu seiner soziologischen Analyse*, Munchen and Leipzig, 1929, containing many instructive examples on divided loyalties in the first world war.

and in this way to divide the loyalty owed to the United States. We will have to show that the problem of dangerous war-time criminality, of treason, and sabotage is none other than that of the divided loyalties. There is, in other words, no mysterious increase in criminal tendencies within the individuals in war-time. Edwin H. Sutherland² contends that an individual acquires patterns of criminal conduct just as he does patterns of lawful behavior. "Patterns of systematic criminal behavior are just as much a part of conduct norms as are the mores of a society." This statement certainly contains a truth, which, however, must be freed from the dross, of the imitation theory which would have us assume that society acts directly in the individual and through the individual. It suffices to say that this theory is impossible because the number of actions and attitudes offered for imitation is so great that the individual has to make his choice, anyway. If, then, the individual selects among the possible attitudes, the imitation is both unnecessary and insufficient for the explanation of what we want to understand.

On the other hand, it is quite clear that the modern theory of the perpetrator, with its purely individualistic approach, finds itself in a blind alley. We may understand that the outraged husband kills the paramour, but we also understand that he kills the wife. And aren't there cases where he kills himself or forgives both of them or only one? And we understand all this. Here are the cases in criminology where our understanding is causal, that is, where we not only understand but may derive the effect from the cause. The latest theories in this field, those of aggression caused through frustration³ are in no position to satisfy the demand for true causality.⁴

Analysis of Personality Doesn't Solve Political Crimes

It has been stated repeatedly that the approach from the subconscious, the repressions, the regressions, the Oedipus complex, etc., do not yield any too much for the problem of concrete causality in criminology.⁵ Be this as it may, the prevention of political crimes through the better knowledge of the personality of the perpetrator, is out of the question. Political criminals have nothing in common with the murderers of Shakespeare's plays. They are not cranks; they are the crank through which foreign powers touch off the lever of sabotage and treason on our soil. The best proof of this could be gathered in the apprehension and trial of

²Sutherland, Edwin H., *The Relation Between Personal Traits and Associational Patterns, Principles of Criminology*, 3rd edition, J. B. Lippincott Co., 1939, quoted from Reckless, Walter C., *The Etiology of Delinquent and Criminal Behavior*, Social Science Research Council, N. Y., 1943.

³Dollard, John, Leonard W. Doob, et al. *Frustration and Aggression*. Institute of Human Relations, Yale University Press, New Haven, 1939.

⁴Cf. Eliasberg, W., "A Closeup of Psychosexual Gratification," *Journal of Nervous and Mental Diseases*, February, 1944. Walter C. Reckless, 1. c.

the eight saboteurs brought over here on a submarine in the summer of 1942. Of different personality make-ups, they were snared by the Gestapo, prevailed upon and trained to become spies, but probably to none of them the usual scheme of the perpetrator would be adaptable. They tried to victimize the United States; they themselves were the victims, the puppets of foreign propaganda and warfare.

To come back to the social theories, we have to understand that social forces, while they are not imitated, are nonetheless effective, inasmuch as they are often (morally indifferent) systems of orientation for the individual. The individual builds up orientations, or lasting motivations, or attitudes, as is seen in the occupations in organized work life, and particularly in the professions. Details of this theory were developed in several of my books.⁶ While many emotional perpetrators do not build up a motivation, those perpetrators in whom we must be interested in order to prevent dangerous wartime crimes, are strongly oriented upon the motivations ripe in their particular group.

There are two important consequences. 1. This type of political criminology is not connected with the individual developmental stages, nor are these criminal repeaters, or on the other hand, occasional offenders. There are youths among them, but also men in the prime of their lives, and even elderly people. The German innkeeper, Stephen, who helped a prisoner of war escape, was a man over 50. "Germany will not let Stephen be hanged," he said. Personally he is a fanatic to the same extent as the youthful Nazi followers. The same holds true also for Lehnitz, of Staten Island, New York, and to a degree for de Spreter.

Just as it is unimportant with what force the switch lever is thrown, provided the force is sufficient to change the position of the tracks, thus it doesn't matter whether political criminals are entitled to bear the diagnostic label of fanatics or paranoics or are hot-heads or simply cold-blooded saboteurs. What matters is the motivation. The motivation isn't to any degree more the reflex of the objectively given situation than it is the reflex of impulses and urges. The situation is real if men define it as real as W. I. Thomas⁷ has pointed out quite justly. Motivations in Germany in the last four generations since the rise and the victories of the Bismarckian Prussia,⁸ were conspicuous through subalternity. The whole people from the *Geheimräte* down to the Social Democrats were all excellent in subalternous positions, where their initiative and activity were kept, through rules and regulations, in joints, as it were. It was Bismarck who com-

⁶cf. Foxe, Arthur N. "Freud's Contribution to an Understanding of Delinquency," *American Journal of Orthopsychiatry*, vol. 10, Oct. 1940.

⁷Eliasberg, W., *Rechtspflege und Psychologie*, Berlin, 1933, and the same with contributors, *Beiträge Zur Arbeitspathologie*, Berlin, 1931.

plained about this state of things which he himself had largely contributed to bring about. Our soldiers are excellent, he used to say, but our citizens are meek. (*keine Civilcourage*). In a previous paper,⁹ I have described a man whose type of criminality could be accounted for through this want of civil courage. He was excellent as a soldier in World War 1; got himself the highest medals and a commission as an officer, but he failed the moment he had to boss himself, when there were no more military or semi-military positions in post-war Germany. This motivation is doubly characteristic of many Germans living in this country, especially of the *Auslandsdeutsche* among them. They can never really befriend political democracy where one is not bossed, where there is no simple hierarchy of heelclicking, and standing at attention, where the state is worth no more than the individuals. Their crimes follow from this disposition. If they are ordered by some one who is presented to them as their superior, they will always follow suit. For this democracy of ours, the Germans are good to live with in peacetime but the *Reichsdeutsche* will be dangerous in wartime to the extent that they can be contacted by ostensible superiors, either in person or through propaganda.

The types of crime that are interesting for us today could be observed in peacetime Germany where tribal life still prevailed. There were, in Upper Bavarian villages, where the whole village used to cooperate in perjury conspiracies in order to clear the younger members of the clan from alimony obligations or to provide alibis for poachers.¹⁰

Incompatible Alliances

A rich storehouse of experiences may be found in the reports of the trials against the Hitlerites and the *Reichsbanner* (a uniformed organization for the protection of the democratic institutions of the German republic which was in existence from 1924 to 1933). The witnesses of the two parties used to swear to that course of events that would be useful for their own party and harmful to the adversary. The judges (there were no jurors at that time in Germany) on their part, used to believe either the one group or the other according to their own political biases.

⁹Thomas, W. I., quoted from Allport, Gordon W., *The Use of Personal Documents in Psychological Science*, Social Research Council, N. Y., 1942, p. 22.

¹⁰Motivations are much more bound to historical conditions than they are to individual developmental stages. For labor motivations, this has been proved to be true in this author's publication, *Challenge of Social Neuroses*, J. Nerv. and Ment. Dis., Dec., 1941. The manifoldness, the averages and the characteristic changes of such motivations were surveyed also in Eliasberg, *Rechtspflege und Psychologie*, l.c.

¹¹Eliasberg, W., *The New Theory of the Perpetrator and the Duties of the Psychiatric Expert*, J. Crim. Law and Criminology, vol. 30, no. 4, Nov.-Dec., 1939.

¹²Cf. M. Hirschberg, *Ein aufgedecktes Meineidskomplott*, Arch. f. Krim. 1931; Gross-Höpler, *Handbuch für Untersuchungsrichter*, 7th edit., Munich, Berlin, Leipzig, 1932, p. 131 on alibis through perjury.

These trials were highly instructive. The reports should be read by Americans who want to know to what degree National Socialists, confessed or unconfessed Hitlerites, can be trusted if they declare that their adherence to the constitution of the United States does not contradict their loyalty to the fatherland. Their defense usually consists in pointing out that every citizen may orient himself upon a great number of loyalties. He may be a devoted family provider, a faithful believer in good and healthy bowling, a member of the Benevolent Order of the Elks and the Methodist Church, and the college alumni organization and what not. However, we know what he may be at the same time and what he may not be. We know that there are incompatible mixtures and National Socialism and the American Constitution form, an incompatible mixture, not only objectively, but also psychologically, for reasons which we already mentioned. You cannot, at the same time, be a leaner-to- and a lifter-up. Whoever believes in Hitlerism can give lip service only to the constitution and will betray it whenever the conflict becomes real.¹¹

In 1932 when five National Socialists had murdered in a most beastly manner a citizen of the village of Potempa, in Silesia, the court found them guilty and sentenced all five of them to capital punishment. At that time the Hitlerites oriented themselves on a pronouncement of Hitler, who, in an article in the *Volkischer Beobachter*, declared war on the *Reichregierung*: "German racial comrades, the justice of Herr von Papen may sentence many thousands of you to die. Herr von Papen, by now I know your bloody objectivity. I wish the victory of our national Germany and I desire the defeat of the Marxian destroyers and annihilators of Germany. I am not the hangman of national fighters for freedom. . . Now the fight for the life of our five comrades is started." The same Hitler sent a telegram to the five convicted murderers. "In the moment of this rousing blood verdict, I feel myself united with you in boundless faith. Your liberty is, from this moment on, entrusted to our honor and the fight against a government which did such things is our sacred duty."

¹¹Compare the literally translated material in the publication of the U. S. Dept. of State in footnote 1: "The National Socialist Germans are loyal to the country where they reside." This was said by Rudolf Hess in 1937. See document 26A, p. 353. In 1936, Bohle, the leader of the foreign organization, had this to say: "The foreign organization has deliberately begun its work by placing upon foreign Germanism obligations to the new Reich (Beyond mere protection of their interests that would be humiliating for a master race.)" Gottfried Feder in the official party program, published first in 1927: "Not to assimilate themselves to foreign ways but to maintain their own superior German ways, that must be the task of Germans abroad . . ." From the *Organisations Buch der N.S.D.A.P.*, 1940: "The foreign organization has the task . . . of keeping alive, in every single German abroad, the principle of the racial community which transcends all classes and religious denominations." U. S. Government Printing Office, Washington, D. C., 1943.

Effect of Propaganda on Alien Born

The forces of social control exercised by the group over the individual have multiplied in this propagandistic age of ours. For the time being, the propagandistic sway over German nationals, foreign Germanism, German Racial Comrades in America, Bundists, or whatever their name is, is much stronger than that over the Germans in Germany herself. Over there the minds are already in a process of sobering. The impact of hard facts can no longer be buffered out by propaganda. In this country, they don't see the crosses covering German corpses, row by row, they don't see the maimed, they don't feel starvation. So here the fogs of propaganda do not yet clear away.

Our task is to recognize those who may become dangerous as soon as possible—at any rate before they may act or even before they attempt. While the technicalities of the application of the existing laws that may be used for counter-action shall not be discussed in this context, we will be concerned with the problems of preventive industrial protection.¹² Under the title "Employment Checking," Kenneth E. Kline advises management first to determine the accurate historical background of every person employed. This already is being done by many authorities, among them the immigration authorities, often in a rather pedantic way, to be true. Letters that are secured from former employers or other people whom the applicant ever contacted do not, on the whole, furnish much useful information, not even if pieced together. The chance is to come across certain contradictory statements. Just recently Gordon W. Allport¹³ has published a survey on this.

Detection of Group Identification

The purpose of our own study is to direct the attention to a method which has not as yet been used for group identification. From our context, it is clear that prevention cannot be based so much on the judicial procedures with the typical steps of hearings, orderly trial, verdict of guilty, and sentence, as upon group identification and group apprehension. In order to do this, we must look for a method which would render the same services for identification of the individual's group as fingerprinting does for the identification of the suspect individual. Language, as was shown in two preceding articles,¹⁴ indelibly and unalterably preserves the vestiges of the individual's group affiliations as his handwriting is demonstrative of his character. On the basis of the words, the syntax, certain phrases, certain emotionally

¹²Kline, Kenneth E., *Police Problems in Industrial Protection*, J. Crim. Law and Criminology, vol. 33, no. 15, Jan.-Feb., 1943, p. 385-391.

¹³Allport, Gordon W., l.c.

¹⁴Eliasberg, *Linguistics and Criminology*, J. of Crim. Psychopathology, July, 1944, and *Their Tongues Shall Bear True Testimony Against Them*.

charged expressions, a certain jargon, a certain vocalism, a certain melody of the sentences; of the type of "spoken shorthand," the *sousentendu*, the words that are spoken emphatically and disbelieved emphatically, the hints, the clues, the gestures, and many other factors; on these we may establish the diagnosis of the age, the ecological influences,¹⁵ the influences in childhood, adolescence, and those that bore upon the individual after he became an adult.

One must note again that the sociological type that expresses itself in the linguistic differences is not the same as in America. In our country the most powerful influences are the differences between rural and metropolitan areas or between Negro language, language of newcomers from foreign countries, mixed languages that derived from the survival of the foreign mother tongue. Another powerful influence is that of the professional slang. Therefore Carl Sandburg could say: "Slang is language that takes off its coat, spits on its hands, and goes to work." In his dictionary of American Slang,¹⁶ Weseen lists theater slang, aviator slang, football slang, drinking and eating slang, soldiers' slang, oil drillers' slang, loggers' and miners' slang, railroaders', hobos' and tramps', crooks' and criminals' slang. Almost the same principle of division underlies Burke's survey of the Literature of Slang.¹⁷ The German dialects, on the contrary, are first and above all regional vernacular. This holds true also for the German speaking part of Switzerland. The first diagnosis you may establish if you listen to a German speaker is whether he stems from Berlin or Vienna or Munich or Stuttgart. And if the Stuttgarter lets loose, he speaks about the same language as does the farmer lad one hour away from Stuttgart. The differences in the language of the New Englander and the southerner or the westerner of about the same background and cultural milieu are by far fewer than the corresponding ones between northern and southern Germany. Only superimposed on the regional vernacular is, in German, what we justly call the slang in the American meaning of this word. However, this type of slang becomes increasingly important for the linguistic diagnosis which we have in mind. The translator of evidence in German or the investigator of German suspects should be thoroughly familiar¹⁸ with the German ver-

¹⁵Bibliography for this in the second of the papers listed in the ft. 13.

¹⁶Weseen, Morris H., *Dictionary of Amer. Slang*, Crowell Co., N. Y., 1938.

¹⁷Burke, W. J., *Literature of Slang*, introductory note by Eric Partridge, N. Y., Public Library, N. Y., 1939.

¹⁸Nennstiel, Karl, *Presse und Propaganda*, Weimar, Ein Hinweis auf ded Zeitungseigene Wesensgesetz; Weimar, 1936; Stiewe, Willy, *Des Pressephoto als publizistisches Mittel*, Lpz. 1936; Eliasberg, W., *Lehrbuch Der Reklamewissenschaften*, Leipzig, 1936; Fallada, Hans, *Kleiner Mann, Was nun*; the same, *Bauern, Bonzen und Bomben*, Berlin, 1935; Bruno Nelissen Haken, *Der Fall Bundhund*, Diederiche Verlag, Jenn, 1930; also already quoted publication of the U. S. Dept. of State. The author is in the possession of thousands of clippings that can be used for such purposes.

nacular and the German professional and occupational slangs, especially with the slangs of the various political and professional affiliations of the National Socialist party.¹⁹

A very important case is the identification of the group on the basis of certain codes. The existence of the code may be used in itself as proof of an underground movement, which, as we know, leads to types of mental expression resembling those of primitive tribal life. The rational necessity for covering certain names and personalities is doubled with primitive tabooing. A third influence often stems from the peculiarities of the youthful gang.

In my preceding papers (footnote 14) the application of political linguistics was shown for the questioning of prisoners of war, suspects in wartime and the sifting of the population in Post-War Germany, Italy, etc. It is the purpose of this paper to show the importance of political linguistics for employment checking, group identification of employees, key personalities, etc.

In prevention and prophylaxis we have allowed ourselves, as yet, to be guided by the methods in criminalistics and especially by the modern trend toward psychological analysis of the individual perpetrator. Prophylaxis, in wartime, while it should use this method too, must rely mainly on group identification and group counteraction.

¹⁹For parallel Italian cases, the same may hold true. Examples in German may be found in my paper, *Their Tongues Shall Bear True Testimony Against Them*, 1.c.