

1952

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Recommended Citation

Wladimir Eliasberg, Urge and Motivation in Criminology, 43 J. Crim. L. Criminology & Police Sci. 319 (1952-1953)

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URGE AND MOTIVATION IN CRIMINOLOGY

Wladimir Eliasberg

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It was in the reign of Edward I (1272-1307) when insanity was admitted as an excuse for crime. About fifty years later, in the time of Edward III, "absolute madness" became a complete defense to a criminal charge. The following centuries witnessed those well-known tests of "absolute madness," by which the mind of the insane was compared to that of a beast. This was the test of "raving madness"—a condition of not knowing right from wrong. Finally, in 1868, came the American contribution—the theory of the Irresistible Impulse.

Before the 19th century the psychiatrists had not been responsible for devising or administering the tests. The psychiatrists stepped in at the end of the 18th and the beginning of the 19th, centuries. They did not make the administration of the law and justice easier than it had been. By the middle of the 19th century, the psychiatrists, as adherents of a materialistic biology, refused to see anything in the criminal but a link in the universal and never interrupted causal chain, which, as the ancients used ironically to depict such abstruse causalism, leads from "the Ovum Ladae to the conquest of Troy."

We are in a dilemma which has more than one horn. In fact it has at least four. The theologians, moralists and philosophers, the sociologists, the lawyers and finally the psychiatrists, seem to hold, each one, to a horn of the dilemma and to pull the criminal, into four quarters.

Usually, when such a dilemma has existed for some time, it spends itself. That is, some practical way of cooperation is found, some common denominator turns up, and later centuries shrug their shoulders about what kept people divided during the "Dark Ages." Do we today still share the passions of the "reds" and the "blues" of ancient Byzantium? Whether or not we are still in the Dark Ages in Criminology is for us to decide. These Ages are the ones in which emotions and monomanias sway the field, while the periods of enlightenment are those of insight into the multifariousness of any problem and a practical tolerance of variant views.

The following paragraphs may show how, at present, the ruling triumvirate in Criminology have stacked their cards: Psychiatry as the representative of the biological sciences; Sociology as the representative of society, and the Law as society's representative in her demands

upon the individual. What follows may suggest when one or another partner in the triumvirate should be called upon.

1. The aim of theory in Criminology is to connect causally the following "givens:" a given crime, a given space, a given time, a given criminal.

2. If the *crime*, the *where* and the *when* are given—find the unknown criminal. *Approach of criminal tactics: "whodunit" approach.* Identification on the basis of isolated mental or physical marks; type of the Wanted-for-description. Various methods, e.g., the Lie Detector¹ or other methods to measure and identify isolated reactions.

3. If space, crime and types of criminals are given, the attempt may be to solve the problem in the light of the spirit of the times—of the cultural background; this is the *anthropological approach*.

4. If culture (time), types of criminals, space factors such as milieu in general, ecological data such as downtown conditions (Chicago Loop, Broadway, New York, Open Cities) with their differential social situations² are given, one tries to solve the crime statistically—the *ecological and sociological approach*.

5. Approach *via* dynamics and conflicts: *psychoanalytical approach*.

6. I wish to say that in 1932, Robert H. Gault, in his *Criminology*, Chapter 13, dealt with "Attitudes" as background of both our motives and our actions. Said he, "Many of our experiences have been forgotten as far as ability to recall them voluntarily is concerned, but their residue remains as the core of affective attitudes which are easily touched off and made effective when the appropriate occasion arises."

In the same year, 1932, my book appeared³ in which I developed the theory of motivations as prime movers behind our actions. The concept of motivation is for practical purposes, not in theory, identical with what American Psychology and Sociology call attitude. It should be mentioned that my field of experience was the German Criminal Court, while Gault had the American scene before his mind's eye.

The lasting orientation of the evil doer to his situation is called his motivation. Neither poverty nor premium on power, nor money nor any other environmental factor acts through the individual before he has built up a motivation.⁴

Motivations are not built up by psychopaths. They are destroyed

1. W. ELIASBERG: *Forensic Psychology*. SO. CAL. L. REV., 19, #4, July 1946.

2. E. H. SUTHERLAND: *WHITE COLLAR CRIME*. The Dryden Press, N. Y., 1949.

3. W. ELIASBERG: *RECHTSPFLEGE UND PSYCHOLOGIE*. C. Heyman Verl. Berlin, 1932.

4. W. ELIASBERG: *The New Theory of the Perpetrator and the Duties of the Psychiatric Expert*. J. CRIM. L. AND CRIMINOL. 30, 1939 *id.* *The Acute Psychosexual Situation*. J. CRIM. L. AND CRIMINOL. 33, 1943.

partially or completely in senility and in various types of psychosis at all ages. Partial destruction of motivation may justify the assumption of complete irresponsibility as action by irresistible impulse.⁵ Lagging motivation or the lack of it may be interpreted as culpable negligence. The so-called sex psychopath may commit a punishable or non-punishable act under the influence of the sex impulse.

Motivation is the common ground on which psychiatrists and lawyers may meet to overcome the gap between biological presumptions and fictions, on the one hand, and those of the law on the other.⁶ The psychiatrist does not deny responsibility in the sense that it is conditioned by motivation.

7. The psychiatric approach considers the psycho-dynamics of a human being both from the inborn biological angle and that of acquired values or motivations. The specific domain of the psychiatrist is illness, either within the biological or the acquired motivational sphere. Neither the lawyer nor the psychologist is competent to judge pathology. Diseased motivation may be intricately connected with physical or mental illness, acute or chronic. For example, crimes committed in acute hyperinsulinism.

8. More often than not contradictions between experts are apparent. The emphasis may be on the statistical data on the part of one expert; on the individual case on that of the other. Difference in training may be in sociological orientation (the expert's motivation).⁷ A few words will suffice to illustrate, not the differences among lawyers and sociologist but their contributions to the understanding of crime and criminals. The lawyers' theory and practice of proof and admissibility of evidence is built on more or less refined insights into the motivations of the witnesses, the jurors, the prosecution, the defense, the court, and, last but not least, of the defendant.

The Sociologist's contributions, on the other hand, are a refined insight into the development of attitudes as motivations in groups of criminals. The outstanding name is that of Edwin H. Sutherland whose small but weighty book was published shortly before his death—"White Collar Crime."

The basic facts which we have learned, especially from the lawyers in the service of the O.P.A.⁸ and other new agencies, are ancient. The

5. W. ELIASBERG: *Irresistible Impulse and Crime*. *Psychiat. Quart. Supp.* 21, Pp. 108-122, Pt. 1, 1947.

6. W. ELIASBERG: *Fictions in Domestic Relationships*. *Psychiat. Quart.* Oct. 1948.

7. W. ELIASBERG: *Opposing Expert Testimony*. *J. Crim. L. and Criminol.* 36, 1945.

8. W. ELIASBERG. *Psychiatric and Psychological Opinions in Court*. *J. Crim. L. and Criminol.* 39, 1948.

Donald R. Cressey. *Application and Verification of the Differential Theory*. *Jour.* 43, 43ff.

lawyers have been accustomed to dividing crimes into *mala per se* and *mala prohibita*, meaning that there are crimes which practically every man abhors, and others are taken as a matter of course; they are more or less a matter of law enforcement and are considered crimes only as long as the statutes say they are crimes. For example, the prohibition laws.

Proud of their insights into the fields of criminal action, the sociologists challenge the psychiatrists, and especially the psychoanalysts, such men as Aichorn, Alexander, Healy, Linder and others on the subject of infant criminality and anti-social behavior "whatever that may be." The sociologists may ask: "Show us conclusively from your viewpoint how the behavior of the black marketeer differs from socially desirable behavior. If you cannot do that point to point, leave us alone."

It would seem, then, as though we are back at our starting point, the irreconcilable conflict of the Dark Ages. I may, however, vouchsafe at least for the psychiatrist: we, at any rate some of us, have learned our lesson. We accept the facts that the sociologists make so much of. They do not fight against values, and we psychiatrists understand that it is value and orientation toward values or motivations that form the empirical character of the criminal as of any other man. We psychiatrists no longer deny the pliability of the urges which only fifty years ago no "true scientist" was willing to admit. Today, fortunately it is no longer the fashion to deny facts just because some theory may have difficulty with them. Have we then to this extent come out of the Dark Ages? Are we about to overcome monomanias? Let us hope we are. And all those involved: criminals, society, experts, counsel, may look forward to an age of better protection, more humaneness and more justice. These have always been characteristic of ages of enlightenment and scientific leanings.