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## PIONEERS IN CRIMINOLOGY

### VI. John Henry Wigmore (1863–1943)

ROBERT WYNESS MILLAR

The author is well known to the legal profession as Professor of Law (now Emeritus) in Northwestern University from 1915 until his retirement. He had been engaged in the practice of law from 1897 to 1915. In March, 1918, he was commissioned Major, Judge Advocate, in the U. S. Army, and was promoted to the rank of Colonel in July, 1919. During the second World War he was special assistant to the under secretary and to the assistant secretary of the Navy. He received the Navy Department's Distinguished Civilian Service Award in 1945.

Professor Millar is a foreign member of the 17th Century Accademia Nazionale dei Lincei (Italy) and honorary member of the Spanish Instituto de Derecho Procesal. He is author of *Common Law Pleading* in *Library of American Law and Practice*, 1912; *Formative Principles of Civil Procedure*, 1923 (Spanish translation by Dr. Grossmann, 1945); *Civil Procedure of the Trial Court in Historical Perspective*, 1952. He is translator and editor of the *History of Continental Civil Procedure*, by Englemann and others, 1927, and has made extensive contribution of articles and essays to the literature of Comparative Civil Procedure.—EDITOR.



JOHN HENRY WIGMORE

“Think of a genius not born in every country, or every time; a man gifted by nature with a penetrating, aquiline eye; with a judgment prepared with the most extensive erudition; with a herculean robustness of mind, and nerves not to be broken with labour; a man who could spend twenty years in one pursuit.” Thus Edmund Burke, speaking of Montesquieu.<sup>1</sup> So far as they go, these words fitly apply to John Henry Wigmore, though yielding him less than justice in failing to reckon with the rich immensity, technical accuracy and wide-ranging sweep of his scholarship. Author of what is undeniably the greatest legal treatise on a specific subject which the Anglo-American law has ever produced—that majestic ten-volume work on the Law of Evidence, ap-

plauded alike by scholars on the one hand and the active ministrants of the law on the other—a work whose historical reasearch, exploration of theory and practice

<sup>1</sup> *An Appeal from the New to the Old Whigs*, 5 Works (ed. Raffety) p. 132.

and fealty to literary excellence has made it a household word in the habitations of the law and a *vade mecum* of the lawyer in full practice,—such nevertheless have been his catholicity of interest and versatility of accomplishment that countless other fields of the law and its allied provinces have been the beneficiaries of his achievements.

And not least of these is the high place that he has won in the annals of criminal science, his entitlement to rank as an American pioneer in that field. It had come to him, as to many others, that our institutions and methods directed to the protection of society against crime were not adequately fulfilling their function, either in respect of society itself or those who thus were assailing it. But to this was added the realization, acquired in the course of his extended investigations of comparative law and comparative institutions, that on the Continent of Europe scientific thought had been conspicuously addressing itself to the study of crime and the criminal, as a matter distinct from the consideration of the technical criminal law. These studies, he conceived, were something which so far almost altogether lay outside our cognizance, but which offered us effective aid in solving our own problems. Detached articles and studies had appeared from time to time in our own publications, and many minds had interested themselves in various phases of the questions involved. Tentative steps had already been taken in a number of our jurisdictions looking toward individualization of punishment in the direction of probation and parole, the indeterminate sentence and the treatment of juvenile offenders. But any consideration of the collective problem on a comprehensive scale awaited further investigation and discussion. To bring together those interested in the relative questions, to learn and compare the results of their inquiries and experiences, to enlist the aid of the European studies, to give cohesion to the scattered efforts at betterment, and to organize a nation-wide movement for reform of methods, constituted an imperative need. And to meeting this need it was precisely the talent of Wigmore that lent itself.

In 1909 he was the prime mover and architect in the organization of the National Conference on Criminal Law and Criminology, which met at Chicago. To quote from the editorial of Professor James W. Garner appearing in the *Journal* presently to be mentioned,<sup>2</sup> this “was composed of about one hundred and fifty delegates, representing the various professions and occupations concerned directly or indirectly with the administration of the criminal law and the punishment of criminals, and included members of the bench and bar, professors of law in the universities, alienists, criminologists, penologists, superintendents of penal and reformatory institutions, psychologists, police officials, probation officers and the like. Delegates attended from every section of the country, and the conference was a very representative gathering of those either actually concerned with the administration of the criminal law or interested in its problems as students and scientists. In character and purpose the conference was entirely without precedent in the history of the United States. It represented the first instance of co-operative effort among those interested in a better system of criminal justice, and marks, we venture to assert, the beginning of a new era in the history of American criminal jurisprudence.” One hundred and thirty

<sup>2</sup>1 *Journal of American Institute of Criminal Law and Criminology* (May 1910) p. 3.

five topics were submitted to the conference for discussion, but it was determined to confine attention to a smaller number to be made the subject of committee investigation and report. A committee was appointed, consisting of Professors Lawson and Keedy, to study the administration of criminal justice in England. Provision was made for the translation into English and publication of the more important of the European studies above mentioned. "Finally, impressed with the advantage of uniting the efforts of lawyers, criminologists, sociologists and all others in the cause of a better criminal law, the conference resolved to effect a permanent national organization to be known as the American Institute of Criminal Law and Criminology, whose purpose shall be to advance the scientific study of crime, criminal law and procedure, to formulate and present measures for solving the problems connected therewith, and to coordinate the efforts of individuals and of organizations interested in the administration of certain and speedy justice."<sup>3</sup> And, appropriately, Wigmore was made president of the Institute thus set on foot.

As one of its first steps the Institute, recognizing the new interest in the problem of the repression of crime, and "believing that an organ should be provided for promoting the new spirit of research and investigation," proceeded forthwith to the establishment of such an organ. Thus came into existence the *Journal of the American Institute of Criminal Law and Criminology*, which, as editorially stated, "will aim to arouse and extend a wider interest in the administration of the criminal law, including the cause and prevention of crime, methods of criminal procedure and the treatment of criminals, to provide a common medium for recording the results of the best scientific thought and professional practice in this and foreign countries concerning the larger problems of criminal science," as well as to record the progress of legislation and administration in its chosen field, advocate the introduction of proper reforms in the matter of criminal justice, and particularly with respect to criminal statistics, and furnish reviews of current scientific literature, foreign and domestic, dealing with crime and the criminal.<sup>4</sup> Under the brilliant editorship of Professor Garner, the *Journal* embarked upon the program thus outlined. In 1911 he was succeeded as editor in chief by Professor Robert H. Gault, under whose patient attention, indefatigable labor and skill of administration, the editorship of the *Journal* has since been carried on. In 1932, on the occasion of the completion of twenty one years of service on his part, it was well said that "rarely has more zeal and a sustained ability been freely given to any publication" than by Dr. Gault<sup>5</sup>—a judgment which his subsequent editorial career has strikingly confirmed. And as to the *Journal* itself no one can doubt that its program as originally outlined has been abundantly fulfilled. It is to be added that in the same year, 1932, the *Journal of Police Science* which had been edited by Lieutenant Colonel Calvin Goddard and published by the Scientific Crime Detection Laboratory of Northwestern University—an institution whose conception was Wigmore's—became fused with the *Journal*, and thenceforward was conducted as a section of the latter.<sup>6</sup> Correspondingly, the

<sup>3</sup> *Ibid.* p. 5.

<sup>4</sup> *Ibid.* p. 6.

<sup>5</sup> Editorial of Professor Andrew A. Bruce, 23 *id.* (1932) p. 5.

<sup>6</sup> Editorial of Lieutenant Colonel Calvin Goddard, *ibid.* p. 166.

name of the Journal was changed to that of the "Journal of Criminal Law and Criminology."

The committee work originated in the National Conference was carried on by the Institute. The reports made by the various committees from time to time appear in the Journal, and represent a contribution of signal value to the cause in which all were engaged. More than ordinary significance attaches to the work of two of these committees. The first is that of the committee, consisting of Professors Lawson and Keedy, charged with visiting the English courts, which superlatively executed its mandate in a report of two parts, affording such a descriptive commentary on criminal justice in England as to become a virtual classic.<sup>7</sup> The other committee function of especial moment was that relating to the translation and publication of European treatises. The result of its labors was the Modern Criminal Science Series, consisting of nine volumes, carefully selected from the writings of European scholars in the field. These volumes are: (1) *Modern Theories of Criminality*, by C. Bernaldo de Quirós, translated from the second Spanish edition by Professor Alphonso de Salvio; (2) *Criminal Psychology*, by Hans Gross, translated from the fourth German edition by Dr. Horace M. Kallen; (3) *Crime, Its Causes and Remedies*, by Cesare Lombroso, translated from the French and German editions by the Rev. Henry P. Horton; (4) *The Individualization of Punishment*, by Raymond Saleilles, translated from the second French edition by Rachel Szold Jastrow; (5) *Penal Philosophy*, by Gabriel Tarde, translated from the fourth French edition by Rapelje Howell; (6) *Crime and Its Repression*, by Gustav Aschaffenburg, translated from the second German edition by Adalbert Albrecht; (7) *Criminology*, by Raffaele Garofalo, translated from the first Italian and fifth French editions by Robert W. Millar; (8) *Criminality and Economic Conditions*, by Dr. W. A. Bonger, translated from the French by the Rev. Henry P. Horton; and (9) *Criminal Sociology*, by Enrico Ferri, translated from the fifth Italian and second French editions by Joseph I. Kelly and John Lisle.<sup>8</sup> The selection thus made amply justified the statement of the committee that "the effort . . . has been made to select those works which best represent the various schools of thought in criminal science, the general results reached, the points of contact or of controversy, and the contrasts of method—having always in view that class of works which have more than local value and could best be serviceable to criminal science in our country. As the science has various aspects and emphases—the anthropological, sociological, legal, statistical, pathological—due regard was paid in the selection, to a representation of all these aspects."<sup>9</sup> It was a particularly happy thought which made the Series include the book of de Quirós on *Modern Theories of Criminality*. For this gave the reader essentially a bird's eye view of the corpus of studies looking to diagnosis of the causes of crime. As said in the introduction by Mr. Smithers, it

<sup>7</sup> This report appears in 1 *Journal*, pp. 595 and 748 (Sept. 1910 and Jan. 1911).

<sup>8</sup> See the report of the Committee on Translations, *Bulletin No. 3 of the Institute*, April 1910, 1 *Journal*, pp. 450-455 (Sept. 1910) and the list appearing opposite the title page in the published volumes. Translation of the Ferri volume was interrupted by the death of Mr. Kelly when a little more than half finished, and was completed by John Lisle, Esq. Owing to the death in turn of Mr. Lisle, the text was revised and seen through the press by George F. Deiser, Esq. and Dr. John A. Forst: editorial preface of Mr. Smithers, pp. xxiv-xxv.

<sup>9</sup> Report of the Committee, p. 452.

“reveals all the shades of thought which have marked the development of the science and constitutes a compendium which no student of the subject can ignore without disadvantage.”<sup>10</sup> On the basis of this introductory study the reader is prepared intelligently to understand and appreciate, for example, the ideas of Lombroso, Ferri and Garofalo, with the differentiation and diversification of stress coming from the pens of the several authors. In such wise there came to pass the dream of Wigmore that there should be available to the English-speaking reader the quintessence of authoritative Continental thought regarding a matter of such high social concern.

On this point is interesting to quote Wigmore's own words, written in 1938. “In 1909,” he said, “we knew and cared nothing about Criminology—the very name was unknown. But from 1910 to 1917 my Committee published the *Modern Criminal Science Series*; it was eaten up by all groups of persons concerned with crime repression. Its volumes still pay a royalty to some of the European authors . . . and Criminology is now an established field of study all over our country.”<sup>11</sup>

We have dwelt on the work of the Conference and of the Institute because Wigmore was essentially its heart and soul. His was the idea which gave it birth, his the organizing ability which brought the movement into activity and endowed it with vitality of function. Not only does the work everywhere bear the mark of his personal accomplishment, but he possessed and exercised the precious faculty of imbuing others with his enthusiasms and attracting their aid and support, by means of which he was enabled to enlist and bring to bear upon the tasks in hand the talent and wisdom of many other outstanding men of science and scholarship. No work of the kind would be possible without financial support, and it was his ability to find sources for such support that permitted the movement to proceed. He it was who had the principal voice in the selection of the volumes of the *Modern Criminal Science Series*, who carried on correspondence with the authors, made arrangements for publication of the books, and determined in fine upon the persons to serve as translators and introducers. For the *Journal* his advice was constantly sought, and its original shaping came substantially from his hands. That advice was ever at its command, and his influence upon the character and contents of the *Journal* continued until the end of his life. In no exaggerated sense he was the founder of the new movement of which the Conference, the Institute and the *Journal* are the tangible attestation.

But his services to criminal science in no whit abated his interest in the technical side of criminal law. It was exemplified not only by articles and addresses, but particularly by scores of case notes, appearing for the most part in the *Illinois Law Review*, in which he took occasion to analyze and comment upon the judicial result, especially in cases decided by the Supreme Court of Illinois. He never hesitated to criticize where the occasion demanded; his views were always sharp and decisive; always impatient of looseness of thinking, he never permitted anything to disturb his fidelity to what he conceived to be the correct application of the legal rule. His criticisms sometimes were not relished by the courts involved, but they did much toward building up a more sensible attitude in decision and yielding a better appreciation of the true rôle of criminal justice.

<sup>10</sup> *Intro.* to the English version of de Quirós, p. xvi.

<sup>11</sup> Unpublished letter of J. H. W. to Frederic R. Coudert, Esq., March 4, 1938.

But important and far-reaching in effect as were the things done by John Henry Wigmore in the realm of criminal science and criminal law, it stands out that these represent but a single panel of the tapestry upon which is spread the rich record of his scholarly achievements and his labors in the public weal.

That record, unfortunately, has never been fully committed to print. Something of its contents may be glimpsed in the editorial tributes paid to him in 1941 in the "Honoring John Henry Wigmore" number of the *Journal*,<sup>12</sup> as also in the memorial addresses appearing in the volume of the *Journal* for 1943.<sup>13</sup> But anything like an adequate account of these contents is a task awaiting a future biographer—a task which in view of Wigmore's ramified intellectual quests, wideness of learning and surpassing energy can never be aught but an extensive one. Pressing closely upon the attention, however, are his services in the cause of legal education, to which he yielded a measureless contribution. All know the indebtedness which the Law School of Northwestern University owes to his efforts. First as a professor, and then for years as dean, he gave it the high character and international repute it now enjoys, gave it also through patient and unremitting endeavor the beautiful building which is its habitation. His efforts, too, brought into being the Gary Library of Law, with its rich collections, notably of Continental and other foreign law. Throughout the country, with repercussions beyond its borders, his influence in the field of legal education was conspicuously marked and widely accepted. Incident to this field, through his instrumentality and leading participation, operating under the auspices of the Association of American Law Schools, the literature of the law in its less technical aspects was enriched by three important series, namely, *Select Essays in Anglo-American Legal History*, in three volumes; the *Modern Legal Philosophy Series*, in twelve volumes, and the *Continental Legal History Series*, in ten volumes. His was in the main the selection of authors, and in the case of foreign material, that of translators; his likewise was largely the editorial work, the arrangements for printing, and the activities of publication. In a similar category are the three volumes of *Evolution of Law*, comprising respectively the *Sources of Ancient and Primitive Law*, *Primitive and Ancient Legal Institutions* and the *Formative Influences of Legal Development*, which he compiled jointly with his colleague, Professor Albert Kocourek.

We referred at the outset to his transcendent treatise on the Law of Evidence. The first edition of this appeared in 1904–1905, a second edition followed in 1923, and the ten-volume third in 1940. But around this work are to be noted its satellites. Here are the *Pocket Code of the Rules of Evidence*, whose third edition came out in 1942, the *Principles of Judicial Proof*, with a third edition in 1937, *A Student's Text Book of the Law of Evidence* (1935), and at least three editions of his *Select Cases on the Law of Evidence*. Nor to be overlooked is his two-volume *Select Cases on the Law of Torts*, a province which bears the impress of his talent for analysis and systematization. And in distinct domains of the law three books stand out in high relief, namely, *A Panorama of the World's Legal Systems* (1936), *A Kaleidoscope of Justice* (1941), and, his last, *A Guide to American International Law and Practice*

<sup>12</sup> 32 *Journal*, pp. 263–296.

<sup>13</sup> 34 *Journal*, pp. 75–92. These appear also in 38 *Ill. Law Review* (1943) pp. 1–15.

(1943). But in these and other fields there came from his pen, besides lesser books and works of individual editorship, a multitude of articles, comments, addresses, lectures, reviews, and introductions to books of other writers, always enriching the subject in hand from his well-balanced thinking and wealth of learning.

In other regards the roll of his undertakings necessarily encompasses his notable career as an officer of the Judge Advocate's Department in World War I, in which, indelibly associated with Selective Service, he was the stalwart support and counsellor of the Provost Marshal General; his services to the reform of civil procedure, marked by his active participation in the establishment and labors of the American Judicature Society; his furtherance of legal aid to the poor, through the Law School and otherwise; his services for years as one of the National Commissioners on Uniform State Laws; his work on behalf of Japanese legal history—a sentimental heritage from the days when he commenced his teaching career as professor of Anglo-American Law in the Japanese Keio University, at Tokio; his participation in the work of the International Congresses of Comparative Law; his labors on behalf of Radio and Air Law, including his service to the Government in the formulation of Air Law regulations and his instrumentality in founding the Journal of Air Law. To name these is but sparsely to indicate the cardinal activities which drew him outside the main lines of his endeavor.

Fame was his portion, both at home and abroad. His name will always be one "fast anchored in the deep abyss of time." But with every homage to the magnificence of his intellectual achievement, his memory as a man will be devotedly cherished by all who knew him. His personal charm, the graciousness of his manners, his genuine interest in the studies of others and the encouragement of their efforts, all elicited their love and admiration. For those coming into close association with him as fellow teachers or otherwise, that association was a gladdening and rewarding thing. Well might each of them say with Cicero's Laelius that its recollection is such "*ut beate vixisse videar, quia cum Scipione vixerim.*"