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**PIONEERS IN CRIMINOLOGY**

**X. Pedro Dorado Montero (1861-1919)**

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The author is Chief of the U. N. Section of Social Defence which deals with prevention of crime and treatment of offenders. His career includes professorships in the University of Madrid, Venezuela, Peru, Chile, Argentina, Uruguay and of La Paz. He was Director General of the Spanish Ministry of Justice in 1936 and Minister Plenipotentiary to Bucarest, 1937 to 1939. He has been Delegate or Legal Adviser to many international conferences and Director of numerous international seminars, including the United Nations organized Seminar on the Institutional Treatment of Juvenile Offenders in Vienna, 1954. His most recent publications (in English) are "International Cooperation by the U. N. in the Prevention of Crime and the Treatment of Offenders", (1953), and "Considerations on the Institutional Treatment of Juvenile Offenders," (1954). In 1955 he represented the Secretary General of the United Nations in the First U. N. Congress on the Prevention of Crime and the Treatment of Offenders (Geneva).

The accompanying picture has been copied from a photograph which is in possession of the author—EDITOR.

Among the Spanish speaking reformers advocating a new criminal law and criminology, Pedro Dorado Montero<sup>1</sup> has always been considered as one of the most important pioneers, who as we shall see advocated one of the most radical and interesting criminological theories of the late nineteenth century.<sup>2</sup>

Although some of his conclusions raised and still raise serious objections and by some are considered as utopian, it cannot be denied that in many aspects he was very much ahead of his time, and in fact still is in some respects.

As very often happens with reformers, Dorado's ideas have been once in a while misunderstood or even distorted by self-appointed followers and critics. They have attributed to him ideas which he never expressed or have identified them with some of the theories held by certain penal schools of his time. While it is true that even the most contradictory theories may have certain features in common the fact remains that it would be extremely difficult to identify Dorado with any other school of thought than that known in Spanish speaking countries as "Escuela correccionalista."<sup>3</sup>

<sup>1</sup> His full name was Pedro García Dorado Montero.

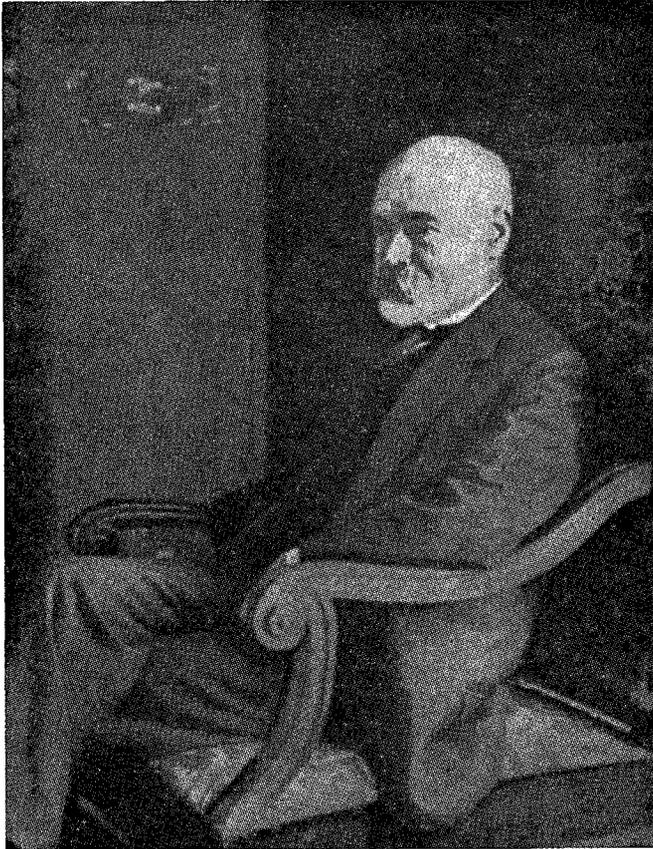
<sup>2</sup> The term "criminological" is used here in its broader sense.

<sup>3</sup> Although there is much in common between the terms "correccionalismo" and "correction" they are not interchangeable. "Correctionalism" would give a better idea of what the Spanish term means.

## I. THE MAN AND HIS IDEAS

Dorado Montero was born of parents in modest circumstances in an isolated hamlet near Béjar, Salamanca in 1861. As a boy he had to walk every day to Béjar in order to attend school. His assiduity and interest rewarded the efforts of his parents who like many other Spanish farmers, wanted to send their son to the University.

An accident—a fall from a cart—left him lame and with a crippled right arm for life. Only his strong character enabled him to overcome the handicap—then greater



PEDRO DORADO MONTERO

than now—inherent in such disabilities. Being a cripple undoubtedly influenced Dorado's character which was already reserved, austere and not very sociable. He was a hard worker and very fond of the country where he went as often as possible. His life was a twofold struggle: he fought first against traditional criminological ideas and systems and secondly, against his physical handicap.

Although as a professor he spent most of his life in Salamanca, Dorado remained fundamentally a country man. The city never conquered him. The influence of Nature, very understandable if we remember his origin, remained strong in every respect and can be seen in his ideas, occasionally expressed with examples in which Nature plays a part.

Dorado and Unamuno were at a certain moment the most interesting personalities of the University of Salamanca. They contrasted strongly in their characteristics and it is no wonder that what was at the beginning a promising friendship ended in a rather distant and cold academic relationship. The varied activities of Unamuno, his wit and philosophy were very probably not the best means to impress Dorado, with his somewhat introvert personality and his devotion to a single question: Criminology.

What is remarkable is that a man like Dorado, crippled for life, having a rather difficult character, leading an isolated and financially hard life should have postulated one of the most humanitarian and generous criminological theories, the theory that the purpose of criminal law is not to punish but to afford effective moral and social protection to offenders. Such is what actually means his theory of "El Derecho protector de los criminales" in which even the adjective "criminal" as applied to law has been suppressed.

In connection with his theory Dorado has occasionally been labelled a radical advocating a society in which the State as a political entity is unnecessary. Without denying that in some of his essays there are passages which might lead the superficial reader to such a conclusion, the fact is that although he advocated a total change of the administration of justice in criminal matters the basis of which would be a new kind of society, he never considered himself as a revolutionary, but always regarded peaceful political evolution as far more desirable than political revolution. Natural evolution of ideas and systems was the only way through which he envisaged the adoption of his theory, and for that, a great deal of time was needed.<sup>4</sup>

Although skeptical about the existing judicial machinery,<sup>5</sup> he maintained the necessity of the State, of a judicial system, and of a penal function. The latter should have as a basis a total identification of the interests of the individual and of society. In view of this identification of interests Dorado cannot be classified with the abolitionists of penal law like Silonief, Kropotkin, and others or as an adherent of the Italian Positive School which actually is based on the fundamental distinction between the interest of the individual and of society. The fact that Dorado accepted some of the ideas of the Italian Positive School does not make him a member or supporter of that School. In fact, Dorado opposed on several occasions some of the most important postulates of the Italian Positive School, namely those concerning the theories of "criminal nato" and "delito naturale". Such point of view did not prevent Dorado from going in certain aspects of his own theory far beyond the Italian Positive School but such an extreme position should be considered as the result of his extreme "correcionalismo" influenced by the philosophical system of Comte rather than by the ideas or principles of Lombroso, Ferri and Garofalo. After all, it was possible for Dorado to be influenced by Comte's philosophy without necessarily being influenced at the same time by the founders of the Italian Positive School. Such a distinction has not always been taken into account in the evolution of Dorado's theory which tried to reconcile two very different things: Comte's positivistic ideas

<sup>4</sup> See "El Derecho y sus sacerdotes"; "Valor social de leyes y autoridades"; "Problemas de Sociología política" and several passages of some of his papers in "El Derecho protector de los criminales".

<sup>5</sup> See "El Derecho protector de los criminales" where he stated that justice is what three out of five want.

with some of the principles of the old Spanish School of thought aiming at the moral "enmienda" (moral correction) of the offender. The term "enmienda" must be understood meaning far more than the term "correction". Literally, its equivalent would be "moral emendation", i.e., all previous errors or faults should be removed from the offender and he should be protected against new errors or faults. Briefly, Dorado is a reformer and a pioneer firmly rooted in the Christian ideas so prevalent among the Spanish penologists. Although it is true that at a certain moment—when he was in Italy and was about twenty-five years old—and after a deep spiritual struggle he decided to abandon Catholicism, the effects of such a decision should be considered in the light of this question: to what extent did Catholicism abandon him? In this respect it should not be forgotten that until then he had been a fervent and active Catholic and that his family, his professors and environment were Catholic too. Without denying that a change took place in him after he took his firm decision in Italy, the fact remains that although a man may abandon certain ideas, these ideas, especially when they are firmly rooted in him, do not always abandon him entirely, i.e., without leaving an impact. This seems to be evident in Dorado. His theory therefore is not the expression of a particular faith but the expression of a Christian spiritualism in which other elements than those strictly orthodox from a Catholic point of view, play a rôle. This seems to be confirmed by the frequent references made by him to the importance of religion in the treatment of offenders. Even more, in one of his most significant papers he maintains, even terminologically, a striking parallelism between the religious concepts of sin, confession and penitential sanction and the juridical terms of offence, confession and criminal procedure.<sup>6</sup> Briefly, Dorado is the pioneer of the penal sanction as a pure spiritual function.

Dorado devoted all his life and efforts to his University and to the dissemination of his theory and ideas. He published a considerable number of books and an impressive number of essays and articles.<sup>7</sup> His linguistic knowledge of several languages allowed him not only to translate into Spanish important publications, not all of them directly related to criminological matters, but also to be familiar with the current ideas in Criminology and Penology. He took an active part in some of the existing controversies and contributed interesting papers to several international conferences or gatherings on criminological and penal matters.

After a long and prostrating illness, Dorado died in Salamanca on 26 February 1919.

## II. DORADO'S THEORY

The main characteristics of Dorado's theory may be briefly stated as follows:

### 1. IDENTIFICATION BETWEEN INDIVIDUAL AND SOCIETY

Such identification should be considered as the point of departure of Dorado's theory. According to him all the evils and therefore failures of the existing penal systems have their origin in the sharp distinction and even antagonism between Individual and Society. Such distinction leads necessarily to a legal duel between

<sup>6</sup> See "La función penal cura de almas" in "El Derecho protector de los criminales". It should be noted that one of his most significant books has as title "El Derecho y sus sacerdotes" (The Law and Its Priests).

<sup>7</sup> See his papers "El Derecho protector de los criminales" and "La sentencia indeterminada".

judge and offender in criminal matters. Both become enemies during the criminal proceedings in which the judge as a representative of Society takes practically only into account what can be used against the offender while the latter reacts in an opposite way and refers only to what is in his favour. Such divergent attitudes are reinforced by the general belief that any penalty in itself is an evil and as such should be imposed by the Judge for the wrong he considers has been done and should be avoided in the eyes of the offender. The result of such controversy very seldom leads to the correction of the offender.

Such attitudes and poor results would completely change if Individual and Society considered themselves as having identical aims and interests. The most important corollary of such identification would be the amalgamation of the principles "pro reo" and "pro societate" in a single principle representing the common interests of both elements. With respect to the process, through which, the identification of interests should take place, Dorado never had in mind any revolutionary methods or processes. He thought that such identification could be achieved by a process of social evolution, resulting from the progress of the sciences, especially of Psychology, which according to him will eventually absorb Sociology and Anthropology.

## 2. PENAL SYSTEM

The compatibility and even identity of interests already mentioned would, in his opinion, lead to a new penal system having the following characteristics:

(a) The principle "nullum crime, nulla poena, sine previa lege" would disappear, as in the new penal system the historical and political antagonism between the Individual and Society would become a thing of the past;

(b) In the application of penal treatments, the individual rights should be considered as subordinated to the effectiveness of such treatment aimed at the moral correction of the offender;

(c) Eventually no definition of criminal offences would be needed. Criminal codes would be used rather as flexible terms of reference and not as binding legal provisions. In fact, criminal codes would be replaced by the "moral and scientific conscience" of the judge.

(d) There would no longer be any distinction between criminal law for adults and special legislation for juvenile offenders, as the principles and methods applicable to the latter would also apply to the former.

## 3. JUDICIAL FUNCTION

On the basis of the foregoing the characteristics of the judicial function would be as follows:

(a) Criminology would become more and more psychologically oriented. Although Anthropology and Sociology are important both of them would be eventually absorbed by Psychology and Correctional Pedagogy. This broad conception of Psychology is repeatedly put forward by Dorado who accordingly considers the judicial function as a "cure of souls". To quote one of his statements "the judicial function should be something having a psychological character, and should be applied in a way corresponding to what I have called on several occasions, the progressive spiritualization of the penal function".<sup>7</sup> According to Dorado such spiritualization,

making the judicial function more and more humane, has a parallel in other fields of human knowledge. It is a general trend pervading all aspects of contemporary life.

(b) Logically the judicial function would be essentially preventive in character so that not only offenders but especially pre-delinquent and even potentially delinquent people would be submitted to a treatment. In other words all people constituting a social danger should be treated. As a first step, the judicial function aims at a social diagnosis but this diagnosis can be only provisional and can therefore be modified according to circumstances and to the changeable characteristics of human nature.

(c) No solicitors, attorneys and other legal officers would be needed. Judges should be especially selected and trained in anthropology, sociology and psychology in order to be able to prevent offences and to cure offenders. They would be assisted by specialists.

(d) The existing criminal procedure would be replaced by a flexible one, adaptable to the circumstances of each case, and having as its only aim the cure of the offender or potential offender.

(e) Owing to its protective nature the treatment would be applied as long as circumstances demanded it. Consequently, a judicial decision would be retractable. On the other hand, the fact that a protective measure has been applied and the person concerned seems to be cured needs not prevent the Judge from applying new protective measures to that person if circumstances warranted. On this point, Dorado is emphatic and rejects the principle of "res judicata". The traditional conception that the offender has paid his debt to Society as soon as he has completed his sentence, has no place in Dorado's protective system.

#### 4. THE DELINQUENT

To the question what is a delinquent? Dorado's answer is briefly as follows: There is no such thing as a criminal type, anymore than there is the born criminal. For Dorado the term type is merely conceptual and does not represent any entity. His reasoning is quite simple and effective; if it is recognized that ontologically there are no criminal offences because such offences are man-made definitions based on prevailing systems of values, then how can one admit the existence of individuals possessing criminal characteristics or tendencies?<sup>8</sup>

According to Dorado the delinquent is only morally inferior and as a result of such inferiority he is placed in an unfavorable condition in which he needs the protection of the "criminal" law. His moral desintegration should be prevented, he should be made morally better through a psychological treatment. If such a change is not possible his individual tendencies should be diverted into a different channel and be given an appropriate application.<sup>9</sup> According to Dorado the fact that the offender is a man in need of a moral and psychological treatment does not imply that he should be considered as a sick person. This important distinction has been occasionally overlooked by some of the so-called Dorado's followers in spite of the fact that he cautioned against identifying the two cases.<sup>10</sup>

<sup>8</sup> See the paper "El Derecho protector de los criminales".

<sup>9</sup> *Ibidem*.

<sup>10</sup> See, especially, "Problemas jurídicos contemporáneos".

Dorado seems to consider the offender as suffering from a moral deterioration that eventually affects his will and self-determination. In combining free will and determinism, i.e., in admitting both of them, Dorado goes further than the old Spanish penologists, to whom the free will was the basic element of any penal treatment. On the other hand, in admitting a determinism mitigated by free will, he did not go as far as the supporters of the Italian Positive School. Briefly, for Dorado, offenders are morally weak persons in need of protection.

## 5. TREATMENT

According to Dorado, the treatment of offenders should be essentially psychological because crime is nothing else than a moral-psychological problem. Owing to its protective nature the treatment should be applied not only to those who have already committed an offence but also to those from whom it is reasonable to expect that they will commit one. Crime and tendency to crime are the points of departure for the application of a treatment the main characteristics of which are educational, correctional and tutelar. This protective aim is the prevailing one and should guide and inspire the treatment. The increasing importance of psychological factors in the treatment is the result of the increasing spiritualization of human life. Dorado constantly refers to this spiritual evolution as the foundation of his theory, though what he exactly understands by it is not always clear. Apparently when speaking of spiritualization he had in mind the increasing importance that psychological factors and therefore Psychology play in modern human life as a result of evolution and progress. The conclusion would be that the human mind is becoming more affected by progress and at the same time more in need of spiritual protection. Be that as it may the aim of the treatment is the reform of the offender's soul. Only when a new and sound soul has replaced the previous one, can the offender be considered as cured.<sup>11</sup> In spite of his positivism and determinism, Dorado is here like in other important aspects of his theory, under the evident influence of the old Spanish School of Penology.

By its own nature and purpose the treatment is indeterminate and can be changed when necessary. Such flexibility presupposes the non-existence of a formal sentence and that the decision taken at a certain moment has only a provisional character. Accordingly, all available means and techniques, including penal sanctions, should be used for the moral correction of offenders and potential offenders. All treatments should be based as far as possible upon an accurate diagnosis for which the knowledge of the aetiology of the particular offence is essential. The application in certain cases of penal sanctions as part of the treatment does not minimize the individual protective character of that treatment because such penal sanctions are applied not for the protection of society but for the protection of the individual. It is this difference in the spirit in which the sanctions are applied that makes it possible to correct the individual.

The person determining the treatment would be the judge assisted by the necessary specialists. In order to ascertain the nature and extent of the treatment, the judge would direct as many inquiries as he deems necessary. Such inquiries would not be conducted according to existing criminal procedure and lawyers, solicitors and

<sup>11</sup> See especially, "La sentencia indeterminada".

attorneys would be excluded from them. Everything would be concentrated in the judge's hands and he would be the only one who could direct, change or end the treatment.

As a result of its protective-curative nature, the treatment would exclude the use of amnesty, judicial pardon and similar practices. Adequate establishments should be maintained for the application of the treatment. Prisons would not be totally excluded but they should be used in accordance with the protective nature assigned to criminal law. Finally, Dorado does not exclude either the possibility of using penal colonies.

### III. CONCLUSIONS

Although influenced by the Italian Positive School, Dorado represents fundamentally a continuation of the "correccionalista" Spanish Penological School of thought whose origin can be traced to Seneca. On several occasions, Dorado tried to relate his theory with some of the points of view already expressed by Spanish penologists from the XVIth to the XIXth centuries, namely Cerdán de Tallada, Juan Eusebio, Lardizabal y Uribe and Marcos Gutierrez. For all of them the protection of the offender and his moral correction are the main purposes of the penal sanction and treatment. In Dorado's theory, that protective and correctional aim assumes an enlarged and occasionally utopian term. His influence, however, among Spanish-speaking writers especially in Spain, has been considerable although none of his followers has ever maintained his extreme points of view. On the other hand, and as very often happens, his theory has been misinterpreted and used to support conclusions completely foreign to his own.

It may be said in conclusion that Dorado was an important pioneer of modern Criminology in that he laid such great stress on the exclusively protective character of the penal sanction without advocating its suppression. The idealism however, led him to advocate principles which if applied would have eventually denied the human rights which he would have been the first to defend. The protection of such rights implies the protection of everybody offenders included.

### BIBLIOGRAPHY

Dorado's bibliography, especially as far as essays and papers are concerned, is considerable. We shall, therefore, mention only his most significant publications.

1. *PROBLEMAS JURÍDICOS CONTEMPORÁNEOS*, 1893.
2. *PROBLEMAS DE DERECHO PENAL*, 1895.
3. *ESTUDIOS DE DERECHO PENAL PREVENTIVO*, 1901.
4. *LA PSICOLOGÍA CRIMINAL EN NUESTRO DERECHO LEGISLADO*, 1910.
5. *EL DERECHO Y SUS SACERDOTES*, 1911.
6. *EL DERECHO PROTECTOR DE LOS CRIMINALES*, 1916.

The last one is by far the most important. Actually it is a considerably enlarged and revised edition of the "Estudios de Derecho penal preventivo". The two volumes—about 1,300 pages—include twenty-nine papers of a varied nature and purpose. The first one—180 pages—is the basic one and its title was used as the title for the two volumes.