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Notes and Abstracts

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NOTES AND ABSTRACTS

ANTHROPOLOGY—PSYCHOLOGY—LEGAL-MEDICINE

Classification of Criminals.—This theme, intimately connected with the etiology, the prophylaxis and the therapy of the law, as expounded by Amanuelle Pélé of the University of Torino, in *La Scuola Positiva*, gives what should be, in a proper sense, the rational classification of delinquents from the genetic point of view of criminal phenomena.

Professor Carrara follows with certain restrictions, the classification of Ferri, viz., delinquents by birth, including the morally insane and epileptics, lunatics, criminals of occasion, of habit, of passion, of politics. Zerboglio gives two categories, viz., delinquents of congenital tendency, including those of birth and of passion, and delinquents through external force including those of occasion and those of habit. Treves, after dividing delinquency into congenital and acquired, subdivides the latter into precocious and tardy, occasional and habitual.

These classifications have the common defect that they do not attach themselves rigorously to the conception of the doer of the crime, from which immediately we perceive the anti-social character of the subject, which is the only criterion which can become the scientific basis of a positive classification of delinquents.

If this is to serve as a norm in the prophylaxis and the therapeutics of crime it must be founded upon the etiology of the crime itself. The ideal is to find a classification which, while it expresses the cause of criminality and informs us of the sources of criminal outbursts, showing a descending scale of danger in different criminals, consents at the same time to graduate correlative the preventive and repressive remedies, in order to combat as far as possible the evil at its source with an adequate counteragent.

Constitutional Delinquents.

We shall call constitutional, criminals from internal causes, and ambiental, those from external causes.

As opposed to the classical school, criminal anthropology studies the crime, not as an abstract phenomenon, but as a natural and blameless phenomenon, upon data furnished by a benevolent series of researches, upon plants, animals, savages and children, to be repressed only because of the exigencies of social defense independently of the moral responsibility or any conception of making the condemned suffer.

Criminal anthropology also inquires into the causes, negatives and the laws of criminal phenomena which continue to stain the world with blood and woe without any philosophical inquiry into first causes which, perhaps, are eternally buried in the "unknowable" of Spencer.

Crime is a form of anomalous activity resulting always from an anomalous structure of the organism and only subsidiarily from an abnormal environment.

Constitutional criminology comes from internal or indigenous causes, ambiental criminality comes from external or exogenous causes, independent of the organic make-up of the criminal.

Constitutional delinquency subdivides into atavic, hereditary, and philogenetic or biopathic; ambiental into pathological, acquired, ontogenic or cerebropathic.

Biologically the philogenetic period is all the time, which runs from the origin of the species to the moment of the union of the nemasperm with the ovulum; the ontogenetic is the period which runs from this union to the complete development of the individual.

Philogenesis can be influenced by causes anterior to conception, consisting in disturbances verified during philogenetic development, while ontogenesis can be influenced only by causes posterior to conception and disturbances arising therefrom.

Comment: This article is an intricate analysis of the factors entering into the causes of criminality as a basis of classification. The terminology, it goes without saying, is more medical than legal.—George F. Deiser, Philadelphia.

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Archivo di Antropologia Criminale, Psichiatria e Medicina Legale.
(Archives of Criminal Anthropology, Psychiatry and Legal Medicine. Founded by Cesare Lombroso.) Milan, 1919. Volume XXXIX. Fasciculus III-IV.—This number of the Archives contains four unusually interesting major articles.

1. Professor Marro contributes an analytical study of a dream-state, combined with extreme physical exhaustion, and brought on by a series of emotional traumata, in a captured Austrian official. While in this state of extreme physical exhaustion, during which the patient ate nothing and ran a low fever, he went to the local police authorities and insisted that he had murdered two people, giving all the details of his crime. Fortunately, it was soon discovered that his self-accusations were false. He was removed to a

hospital for treatment, and gradually his condition settled into normal outlines. An amnesia, however, persisted, for all acts and thoughts during the emotional state. He was able to relate two dreams; and using these as a starting-point, Professor Marro was able to develop a psychoanalysis, by means of which he traced the genesis of the patient's obsession concerning the commission of the two murders, of which he had accused himself. The patient was able to accept and mentally to unify this analysis with his normal consciousness. The result was a lifting of the amnesia. Marro gives his psychoanalysis in detail; it is most interesting as well as convincing.

2. Dr. Cazzamalli has written a paper on "The War as a Historic Source of Future National Deterioration." At least, this is a somewhat broad rendering of the title; "*La Guerra come avvenimento storico degenerogeno*," which is rather too concise to admit of a more literal translation. He believes that the war and all its pathogenic happenings, mental and physical, have affected or will affect the germ-plasm of many future parents, so that the coming generation will bear many marks of degeneration. Or, to quote his own words: "The past war, with all its forces effective of morbidity, must diminish the biological patrimony of general heredity in a degenerative direction; and such a diminution of biological patrimony, which would normally be handed down intact from father to son, must necessarily redound to the collective detriment of future generations." He discusses the various classes of traumata, caused by the war. Physical influences are divided into direct influences (such as cerebral traumata) and indirect (such as the strain of prolonged battles or bombardments, with their resulting effects of organic exhaustion). Mental influences, such as emotional shock, form another class. Finally, there are physio-psychic influences, which are the most frequent, and are combinations of physical with mental results. He traces the effects of these various influences, first on normal, then on psychotic or constitutionally inferior military persons. Then he sketches certain typical syndromes of war psychoses—shock, asthenia and the like. There follows a discussion of what the author calls the "Commotional Syndromes," which include emotional traumata of various types; the most interesting section of the paper. Infections and intoxications that result in lesions of the nervous system—over-excitability and lack of mental or ethical balance—together with psychoneurotic disturbances among the civilian population, are also discussed. A brief clinical classification of the various types of degenerative post-bellum personalities closes an interesting, even if a somewhat depressing discussion.

3. The article by Capt. Pusateri of the Italian Military Medical Service is illustrated with six excellent photographs, and deals with the simulation of deaf-mutism in the Italian army, as well as with malingering by means of self-inflicted wounds of the auditory apparatus. He discusses first the general facial expression and facial outlines of real deaf-mutes. With these he compares the simulators of deafness, exaggerators of slight existing deafness, and finally those cases in which the soldier has voluntarily acquired some degree of deafness by means of self-inflicted traumata of the ear. He presents, in his series of valuable photographs, types of the faces of real deaf-mutes, of simulators, exaggerators, etc. And he reaches certain logical results, and sets up useful rules of examination, by means of which the simulator or the exaggerator may be unmasked. Each type discussed is illustrated also by case-

histories taken from the captain's own medical experience during the late war.

4. Capt. Lattes, in a brief article, attempts to define and to set up as a definite criminological psychotic class, "The Constitutional Cenestopath." It is interesting, but not convincing. In contra-distinction to Buscaino, who, although accepting some elements in Lattes classification, did not class patients who showed these symptoms as "criminals born," Lattes insists that his constitutional cenestopath is the inheritor of an "immoral constitution," and is, therefore, a "delinquente nato." So the long-laid ghost of Professor Lombroso's "Born Criminal" still throws shadows on the wall of our modern criminological thinking.

These four major articles are followed by a series of criminological notes. Among these there are two of especial interest. One, on the use of aeroplanes by Italian thieves in making their "get-away" after a successful safe-robbery; and another, dealing with "modern thieves" and touching on a subject that has become acute in our American cities, namely, the organized thefts of automobiles. Apparently, this type of organized delinquency is something new in Italy. For this note describes, as the height of modern cleverness in thievery, a band of auto-thieves, who had one or two "fence-garages" in different Italian cities, to which they drove their stolen cars and where these cars were made unrecognizable and saleable. The American auto-jack could teach his Italian brother many useful things. It would be interesting to discover how many of the captured Italian auto-thieves have been to America or have had experience as American chauffeurs.

Under "Medico-legal Jurisprudence," some eight new decisions of the Italian courts are noted. One, on abortion, brings up the following question: whether or not a person is guilty of the crime of having procured an abortion in another, if that other, the pregnant woman, be found, after the abortion, to have been carrying a dead fetus, or one that could never or that might never have reached maturity. The court held, that if the accused had the intent to procure an abortion in a woman who appeared to be in ordinary circumstances of pregnancy, and that if, to this end, she made use of such means as are ordinarily suitable and sufficient to produce an abortion—then the woman was guilty, it being superfluous to ask whether or not the fetus was capable of life or of arriving at a normal ending of its intra-uterine existence.

Among the book reviews may be noted a review of Niceforo's book on the Measure (or Span) of Life, in which he applies statistics to biological and historical studies; such as the productivity of certain great authors at various epochs of their lives, the mortality statistics of various races in different geographical zones, etc. His aim is to reach some conception of the laws that govern the measure of vital activity in races and individuals.

There is also a very appreciative review of Professor Robert H. Gault's paper on "The Teaching of Criminology in Schools and Colleges," which appeared in the November JOURNAL of our Institute for 1918. Four entire pages are given to notes and comments on six numbers of our own JOURNAL—Vol. VIII, Nos. 2, 3, 4, 5, and 6, and Vol. IX, No. 1.

Some brief necrological notes (among them a note on Professor Haeckel) bring to a close a most interesting number of these Archives, now in their fortieth volume, founded by Lombroso himself and with the exception of the Archives of Professor Gross in Graz, probably the oldest publication devoted

to medico-legal and criminological interests.—John R. Oliver, Baltimore, December, 1919.

Lessons of the War in Mental Hygiene.—The Lessons of the War in Mental Hygiene is one of the chief subjects to be considered at the Third Convention of Mental Hygiene Societies of the United States and Canada, to be held in this city February 4th and 5th, under the auspices of the National Committee for Mental Hygiene and the Committee on Mental Hygiene of the New York State Charities Aid Association.

Major General Merritte W. Ireland, Surgeon General of the Army, will preside at the meeting held at The Waldorf-Astoria, at which this topic will be discussed by the highest military authorities. The examinations which were used to determine in advance whether or not American soldiers could bear the strain of war will be dealt with by Dr. Pearce Bailey, formerly Chief of the Division of Neurology and Psychiatry in the office of the Surgeon General. Dr. Thomas W. Salmon, Medical Director of the National Committee for Mental Hygiene, who was in charge of the care of mental and nervous cases in the A. E. F., will describe methods for applying to civil life the procedure employed in dealing with mental and nervous diseases in the American Army in France. The effect of the war on research in neuropsychiatry will also be discussed.

It is stated by the National Committee that mental examinations in the American Army eliminated in advance thousands of men who would have developed mental or nervous diseases if they had been sent to the front. Consequently, the amount of mental disease, crime, suicide and war neurosis in the A. E. F. was much smaller than might have been expected on the basis of allied experience. Nevertheless, as all men who were passed by the local boards and later discharged at the camps are eligible for treatment at the expense of the government, 38 per cent of the patients discharged from the army and now under the care of the War Risk Insurance Bureau and the Public Health Service are mental or nervous cases. It is with this specific problem, as well as with the general application of war experience, that the convention will deal. Other subjects discussed will be the mental hygiene of childhood, the mental hygiene of industry, and mental factors in physical disease. Among the speakers will be Dr. E. E. Southard, Director of the Massachusetts Psychiatric Institute, Boston; Dr. E. Stanley Abbot, Medical Director of the Pennsylvania Mental Hygiene Committee, Philadelphia; Dr. William A. White, head of the Government Hospital for the Insane, Washington, D. C.; Dr. C. Macfie Campbell and Dr. John B. Watson of Johns Hopkins University, Baltimore.

In addition to Major General Ireland, the presiding officers will be Dr. Walter B. James, president of the National Committee for Mental Hygiene, and others prominently identified with child welfare work.

At the last convention, held in New Orleans in 1916, seventeen state societies for mental hygiene were represented. Since that time new organizations have been formed in Maine, Kansas, Iowa, Virginia, Alabama and Mississippi, and a national committee for Canada has also been organized.

Some Remarks About Testimony.—(Summarized from the experience of French psychiatrists and experts in legal medicine.)

(I) Testimony is the written or spoken statement by an individual called

to be a witness of what he has seen, given in a spontaneous way or under some kind of instigation.

Testimony is the result of a series of complex psychic operations: Perception, consciousness, attention, memory (fixation, conservation, reproduction) and imagination.

In abnormal cases, innumerable are the psychopathic elements which interfere, such as perturbation in perception, in memory, in imagination, in judgment and also in sentiments. Even of cases of clear-minded witnesses, testimony is the result of so complex psychic operations that it is liable to alterations and variation, due to the many objective and subjective conditions in which it is produced. By objective conditions, is meant: the kind of facts that are observed, their duration, complexity, repetition, oldness. By subjective conditions are understood: the witness' age and sex, his intellectual level, his psychic qualities and aptitudes, his emotive state at the time he has witnessed the facts, and at the time he has had to testify.

The experimental method, first adopted by Binet, is the most fruitful way of studying testimony. It consists in calling forth under conditions of deposition arranged before hand the statement by a witness of the facts he has observed.

Different factors interfere with this operation: Time of presentation of the facts, interval of time between the presentation and the evidence and form of the deposition, whether spontaneous or by interrogation. This last point is of so great importance that Binet has given as a law in the psychology of testimony, that the value of a deposition depends greatly upon whether it is spontaneously given or elicited by questioning.

In a freely made deposition, the influence of suggestion is eliminated, whereas cross-examination provides opportunity of influencing the witness, and shows clearly how forcing memory interferes with its accuracy.

The two methods of deposition combined give the most fruit. Successive depositions on the same facts enable us to study the influence of testifying upon memory, upon the mechanism of the consolidation of exact or erroneous memories, and upon the progressive alteration of testimony by later depositions.

It is necessary to analyze testimony as to its qualities. These are of two kinds: Subjective and objective.

Subjective qualities are:

- (1) Extent, meaning the totality of positive information, exact or erroneous, given by the evidence.
- (2) Veracity.
- (3) Assurance which may be justified or unjustified.
- (4) Originality, which brings into the evidence the personality of the witness, showing his competence, his education, his intellectual inclinations. The same facts stated by different individuals will have a very different touch of originality.

The objective qualities are:

- (1) Testability, which is the suitability of an object for giving rise to testimony.
- (2) Memorability, being the quality of an object which provokes exactitude in the recollection of it.

Both are dependent on the interest aroused in the witness. They depend on the attention the witness has given to the facts he has observed. Small details

which do not interest the witness will therefore easily be forgotten or altered, or not even noticed at all. Theophile Gauthier had a right to say, "Many people do not see." For instance 25 persons may come into a room, not more than three will notice the color of the wall paper, or will be able to say whether the table is round or square. To these qualities of testimony it is necessary to add the unity or plurality of observers of the one and same fact. Collective psychology interferes and influences individual psychology. The crowd observes, conceives and reacts very differently from the way a single individual does. There is not only addition, but multiplication of sensorial illusion, of errors of judgment and of passionate impulses.

(II) It follows that an entirely trustworthy testimony is exceptional. Testimony may be unreliable on account of omissions, additions, transformations and falsifications, which are as many causes of error.

Also, the older an observation the less chance there is for testimony to be truthful. Mistakes are more plentiful in interrogation than in a spontaneous statement. Interrogation increases the extent, but diminishes the trustworthiness of testimony. Elicited by interrogation, one-fourth of the facts is erroneous, whereas only one-tenth of statements made spontaneously is false.

The conclusion is therefore that answers depend upon the way the questions have been put. For an adjudication of testimony, question and answer are coupled and must go together.

The *assurance* or *sincere conviction* of the witness is by *no means* a guarantee of his truthfulness. A really good witness is not so sure of himself, for doubts are bound to occur if he is gifted with a critical and well-trained mind. Assurance is dependent on the character of the witness far more than on exterior circumstances. Each individual has his coefficient of assurance. Women are more inclined to swear than men. Although general outlines of the facts may have been well kept in mind and recollected, small details such as color, shape, etc., are recollected with less accuracy or even not recollected at all.

In collective testimony, truthfulness does *not depend on the number* of witnesses. In cases of confrontation, truthful testimony is exceptional. Errors in a victim's recognition of an aggressor frequently lead to miscarriage of justice.

Testimony is much altered by the conditions under which the experience is made, whether the witness is warned and knows beforehand on what facts he will be called upon to testify.

Emotion must not be neglected among the causes of error in testimony. It is most important because of its disintegrating effect on mental synthesis, while it also disturbs perception. Dissociation of memories by emotion is well known in psychopathology. It alters the observation of facts and necessarily the evidence also.

Security in testimony increases with age of the witness. Extreme suggestibility in childhood gives a child's testimony, but very little truthfulness. Men's testimony has less extent but more certitude than that of women. *Capacity to give testimony is educable* by exercise.

(III) In some individuals this normal untrustworthiness for testifying is exaggerated into what has been called by Dupré *Mythomania*.

By this name is understood a pathological condition the principal character

of which is a more or less voluntary and conscious tendency of the mind towards falsehood and fabulation.

In childhood mythomania is not a pathological condition. A child has but little experience. It has little capacity for judgment; it has few notions of comparison or control, which are indispensable for the making of a critical mind. A child is a timid and suggestible being, and the working of its mind implies a natural and incessant mythic activity.

This activity appears as soon as psychic life begins, grows simultaneously with the development of the mind, then retrocedes gradually in proportion with the evolution of perception, with the acquisitions of memories, with the accuracy of judgment, and finally disappears when the psychic powers reach a perfect equilibrium.

This mythic tendency persists only in abnormal cases and must then be considered as pathological.

If at a certain stage of childhood the cerebral evolution is slackened or altogether stopped, a proportional weakness of perception, of memory and of judgment will be noticeable, and the persistence of an infantile state of mind will entail the persistence of mythic activity. Thus, weak-minded individuals, who are incapable of perceiving the reality of facts, incapable also of keeping them in mind without alteration, are pythomanes and are therefore inaccurate in testimony.

Testimony brings into question so many psychic qualities that its exercise appears to be among the most reliable tests of mental perfection and equilibrium. Thus reliable witnesses are scarce, because accurate minds are exceptional.—Tom A. Williams, M.D., Washington, D. C., Correspondent in Société de Neurologie de Paris, etc.

Military Value of Psychiatry.—Who shall say what one thing or event won the war? But we can agree that when the German navy refused to fight Germany lost her sea power and, hence, lost the war. In September, 1918, the German navy received orders to go out and fight, a last desperate try for a place in the sun for imperial Germany. Mutiny resulted. Germany had forever lost. Hostile, allied and our own contemporary historians concur on these points. Can we interpret them correctly and be guided by them in the future to maintain and to further develop our own sea power? Morale must be scientifically created and developed, and those who naturally will be the first to show the insidious and destructive causes of disaffection from the loss of morale must be eliminated from military life.

Our allies needed all the physical man-power they could find to fill their armies and navies, and needed the men so hurriedly that careful selection was not feasible. Costly mistakes were inevitable, e. g., the great number of cases of so-called shell shock in their militarily useless invalided troops. Fortunately, the United States were not so rushed. In the American army a complex organization of psychiatrists with associated psychologists and physiologists endeavored to eliminate from among the recruits those who were definitely mentally unfit to be of military value. Unfortunately, too often their recommendations were disregarded, but much good work was done. In the absence of a broad and accepted policy throughout the army the attitude of local commanding officers varied. Furthermore, the army was not able to

find enough good clinical psychiatrists who were capable of becoming good military psychiatrists. However, the American army had relatively few mentally unfit men in the veteran combat troops. In the United States navy there was a less complex organization in psychiatric work, but at the larger naval training stations serious efforts were made to eliminate the mentally unfit among the incoming recruits. It was recognized that these would not only be of no military value in battle or in training for battle, but that at sea or ashore they would be a medical, military and anti-social handicap and would markedly tend to tear down the morale of their associates, viz., the insane and the potentially insane, the feeble-minded, the epileptic, the constitutional inferiors, the unstable neurotics, the weaklings or psychopaths, and the uneducable. No such person should be permitted to remain in the service after the abnormality is diagnosed. The irrational, the seclusive, the persecuted egoist, the easily depressed or discouraged, and the frail in will are the ones who will first lose the herd instinct of self-preservation; they are the ones who will first quit to save their individual selves; they are the ones who by grumbling and by example will destroy the morale of their shipmates. The mentally unfit German sailors were in all reality our allies.

Have we unwitting enemies among our enlisted personnel who have escaped detection, survey or discharge? By available modern scientific means they can be diagnosed by military psychiatrists.

In a constructive way, new methods were developed to meet the constantly arising and very pressing exigencies of the war. Much credit must be given to Professor Raymond Dodge of the Department of Psychology of Wesleyan University. Physiologically and mentally, men were tested and selected for such important duties as gun-pointers, anti-submarine listeners, radio operators, airplane observers, etc. The great schools, such as radio, demanded picked men who were in every way fitted for specific ratings. Sound theory, not speculation, common sense practice, and efficiency in selection of men helped make our rapidly-growing navy powerful in time of need. The enemy knew and felt that power. His weaklings appreciated it and their crumbling morale so affected the others the morale of the whole disintegrated.

In our participation in this war we did not experience all the probable phases of warfare, such as long campaigns, defeats in battle, sieges, loss of territory or of fleets, change of leaders and attrition. For us it was unique. Did we develop morale which would have enabled us to achieve ultimate victory had we been less fortunate than we were? Morale can be planfully and deliberately engendered and developed even now, although our present knowledge of the psychology of morale is meager. Encouragement to further study of this tremendously important factor in warfare must be given during times of peace and of preparation, and its accepted principles firmly and scientifically applied. Had the German scientists devoted more attention to constructive psychology in building up the morale of their navy than they did to destructive propaganda among the allies and the neutrals, the results might have been somewhat different and the issue still in balance.

Conclusions

The application of psychiatry to military and to naval problems results in increased military efficiency with corresponding deterioration of enemy morale.

The psychology of morale is admittedly only partially understood as yet.

Morale among combat troops or crews can be scientifically planned by military psychiatrists and should be developed by the officers and by civil organizations at home and in the field.—Harold Stacey Hulbert, M.D., former chief of the Psychiatric Clinic, Naval Training Station, Great Lakes, Ill.

Recent Advances in State Care of the Feeble-Minded.—Tuscaloosa, Ala., August 4, 1919.—Southern states are rapidly coming to a realization of the costliness of the neglect of the feeble-minded. This class of persons, as distinguished from the insane, were recognized in Texas in 1915, when \$100,000 was appropriated for the establishment of a state colony for the feeble-minded. In 1917 Arkansas established a state colony.

In 1918 the commonwealth of Kentucky, which was already spending \$212,000 per year for the maintenance of feeble-minded persons, appropriated \$50,000 to expand the state school into a farm colony.

Last year South Carolina also made an appropriation for the establishment of a state colony, and made provision for the custody of persons born with too little wits to manage for themselves.

By a law passed in April, 1919, the State of Tennessee established the Tennessee Home and Training School for Feeble-Minded Persons. It set apart for the use of this institution the \$300,000 plant of the Tennessee Industrial School, making provision for the moving of the industrial school to the boys' reformatory, and moving the reformatory to the Herbert Domain in the Cumberland Mountains, about one hundred miles north of Chattanooga. \$10,000 was appropriated for the adaptation of the industrial school to the purposes of caring for mental defectives. There was also appropriated \$180 per capita per annum for the maintenance of all feeble-minded persons committed by the courts to the training school.

In May, 1919, the Florida legislature appropriated \$200,000, available during the next two years, for the purpose of establishing and maintaining the Florida Farm Colony for Epileptic and Feeble-Minded.

Commissions in the states of George and Mississippi have the matter of state care of the feeble-minded under study, and a bill is before the present legislature of Georgia looking to the establishment of a colony in that state.

The economy in money and in citizenship of such an establishment in the State of Alabama has been abundantly demonstrated to the people of the state. From the statements made above it is readily seen that Alabama will be left very much alone in the matter of the neglect of the feeble-minded if the present legislature does not act favorably upon the Alabama Mental Deficiency Bill and make appropriation for the establishment of the Alabama Home for Mental Inferiors.—Thomas H. Haines, M.D., Society for Mental Hygiene, Jackson, Miss.

COURTS—LAWS

The Interpretation of Penal Laws.—(Abstract of original article by E. Romano di Falco, *L'interpretazione delle leggi penali*, *La Scuola Positiva*, Serie III, Vol. VIII, No. 6, p. 385.)—Can a general theory of interpretation of penal laws become a part of the integral system of the penal code when this system is the result of a unique and organic reconstruction juridical

alone of the general ideas of penal science itself? In other words, is there such a thing as a special theory of interpretation of penal laws? Then, assuming this to be true, must there be a diversity according to whether one is interpreting a penal norm or a norm of criminal process? Then must the problem of interpretation be considered exclusively from a general point of view without reference to the particular nature of the juridical norm so that this becomes a subject solely to be treated as a general theory of law. Then, if, as we shall see, there is an autonomous theory of interpreting penal laws, and it must have a definite profile according to whether the interpretation is directed at a criminal norm or a procedural norm, why and how can such a thing exist? This is the same as saying, what kind of norm of interpretation belongs either to procedure or to the criminal law proper, and by what criteria may it be established? What are the relations which the two forms of interpretation have to each other, and what are the limitations that divide the one from the other? Such researches are difficult, because through them it is possible to overlook the entire field of criminal law and to establish certain principles which not only should form the basis of interpretation, but form the absolute foundation of dogmatic research.

As a matter of fact, in certain treatises of criminologists it does not seem to be considered important whether or not there exists an autonomous theory of interpreting criminal law and criminal procedure in such a fashion as to give a definite outline to both.

Certain writers, therefore, are not interested at all with the interpretation of criminal laws. Others speak only of interpretation of criminal procedure, or they claim that the procedural laws should be interpreted in precisely the same manner as the penal laws. Others, while claiming that the interpretation of penal laws cannot be regulated in a fashion conformable to the interpretation of substantive penal law, have not attempted to develop such a theory. Other criminologists, although they see the necessity of a definite theory, have not reached a fundamental conception, nor have they given a definite statement of the principle in mind. But finally, there are certain writers who have observed that the interpretation of penal laws must follow the same rules as the interpretation of laws in general.

It becomes evident, therefore, that it is necessary to discover some rule for interpreting criminal law in the sense above indicated. Naturally, as we propose to begin such a study, this must be taken as tentative only and we should be congratulated if we can do no more than state the problem and expound its fundamental points.

Is there such a thing as a definite theory of interpreting criminal laws?

There are certain theorists who assert that as a matter of fact an autonomous theory of interpretation of penal law is unthinkable. Here we shall limit ourselves as to this with the observation that this tendency has exercised great influence upon many penalists who consider the norms of interpretation as general norms and those which are common to the entire field of law.

Vittorio Scialoja advanced the conception that the norms of interpretation have not the same application to all fields of law, and that even in the same field these norms are not identical. This distinguished Romanist, after having revealed that from the theory of the sources and importance of interpretation which is applicable equally to public law and to the actual

application of the law and constitutes a part of the recognition of the law, observes that the norms of interpretation are determined by the structure of the political body to which the law belongs.

Such theories in general are practically regulated by the written law and they are determined more directly by the necessity of men and of things which, after all, form the original source of law itself. So with the law itself there are understood certain things which might be called traditional or customary, provided that the idea of a long-existing custom is not applied to this theory. All written law has its basis in a certain customary law, for the law itself which lays down the rule cannot do anything but essentially customary.

All of the written law is based upon necessary law, because the law which governs conduct can only be essentially customary; therefore, the rules of interpretation are generally unconscious and have the appearance of the result of general and logical necessity. The law requires, therefore, that statutes be interpreted diversely, according to the diversity of their natures. The illusion of a dogmatic and universal theory of interpreting law, based upon abstract logic, could not arise except through the customs of those who interpret it, and of those who have busied themselves with treating the laws of private rights in legislation as if they must follow necessarily personal liberty, whatever might be the political situation.

Hence, the majority of the rules encounter no practical difficulty, but this does not mean that the theory so formed is perfect, but is, in certain ways, false; yet it is wonderful that great problems do not arise from such theories.

Hence, according to Scialaja, the norms of interpretation are true and proper juridical norms, according to the epoch, but it follows, nevertheless, that the principles which govern the interpretation of laws are essentially variable and relative.

From the foregoing investigations then we may conclude that besides the general principles of interpretation of laws which are general and common to all branches of law, in other words, the general theory of interpretation, there are other principles of interpretation applicable solely to each particular branch of the law. Therefore, the study of those special principles which govern the interpretation of criminal laws constitutes a matter which must be considered and treated as if based upon the particular topic. Hence, arises a theory of penal laws which takes its origin from the elements of interpretation common to all branches of law proceeds so far as concerns penal law to the specification of those elements which differentiate them. It must be taken into consideration that first the elements common to both are bound by the same rules, while those which are peculiar to the criminal law must be construed accordingly, viz., by special rules of interpretation.

While it is difficult in a translation to do justice to so highly abstract a discussion of legal interpretation, the impression gained from reading this article of Dr. di Falco is that the question remains at the end of the discussion very much where it began. That is to say, that every legal problem must be solved by a resort to certain general principles which are almost as old as law itself, but that special circumstances require a change of treatment. In other words, where a penal law is under discussion and it presents no abnormal features, then general principles of interpretation may be applied. The special

interpretations to be applied to penal laws only occurs when the law is so nearly original that no formerly existing rules of interpretation can be applied to it.—George F. Deiser, Attorney at Law, Philadelphia.

The Public Defender: a Constructive Suggestion.—I always have been in favor of any adequate and proper method of affording defense to those charged with crime, particularly the indigent. I still feel that in casting about for this method it perhaps is unwise to hit upon an expedient rather than evolving a system or method that is fundamentally sound. However, at the present time, due to abnormal and unusual conditions, many elements must be considered in connection with this matter, as well as in connection with many other subjects. It perhaps is trite to say that the country is in a state of unrest. I may be influenced in my views by the local situation where I live, namely, Chicago. It seems to me (and I know it does to many residents of Chicago) that acts of violence, crime and vice, at the present time, are rampant there. The public prints are no more zealous in the search of any kind of news than that of crime. Accordingly the reading public generally knows of the commission of most of the crimes. The many crimes committed often, if not usually, are attributed to belated and ineffective prosecutions of those persons charged with the crimes. That view of the people may or may not be correct. Whether correct or wrong, it is vital and important in time of special unrest, industrial stress and unusual waves of crime. The people in general become impatient with anything in the way of temporizing. They like to see something in the nature of the prosecution of some direct method without untried innovations.

The principle of public defender may be sound. Just now I am inclined to think it is. But it is my impression that just now the view of the layman, the common people (for whatever cause) is that the state would be inefficient in dealing with lawlessness by prosecuting for crime with one hand and defending with the other. I suppose there is no specific for crime. Perhaps sometime our scientists may find one. I am not sufficiently conversant with criminology to know the best method of minimizing or eradicating crime. The only method that occurs to me just now involving the use of the judiciary and its machinery is to deal out punishment swiftly and certainly. The use of this method will succeed in decreasing crime only as the people feel that it is being used and that it works. I doubt that the adoption of the system of public defender will have the tendency of inspiring the people with the belief that the machinery of the court has become more effective in stamping out crime. On the other hand, I believe the people would regard the inauguration of this system as another experiment by those who are bent on reforming the world. It may be true that such a general impression would be incorrect. The point to me is that this is no time for the people in general to have such an impression.

Just now the anchor has got to be obedience to the law and punishment to him who violates it. The public must become imbued with and better yet, obsessed of that idea. With such an anchor the public can look forward confidently to the solution of economic, industrial, financial,

political and social problems. Anything that does not help to imbue the minds of the people with that idea just now hurts. Accordingly my query is: Can the public defender idea now be adopted without detriment to the state? I am not opposed to the principle. Is this the time to inaugurate it?—Harry E. Smoot, Chicago.

State Provision for Defending Poor Persons Accused of Crime.—Massachusetts, unlike other states, makes no provision for the defense of persons charged with felony, excepting in capital cases. There are three ways of doing this: (1) By appointing counsel and paying them from public funds; (2) by assigning an attorney who is compelled to serve without compensation, and (3) by employing one attorney, designated as Public Defender, for all such cases.

Following will be found the methods of different states in the performance of this duty which Massachusetts neglects:

Counsel Provided at Public Expense

Rhode Island—Whenever occasion may require, court may appoint counsel, regardless of nature of offense. Reasonable compensation to be allowed, not exceeding \$15 per day for not more than two days in conducting trial, or, if no trial is had, not more than \$10 per day, excepting in murder cases.

Minnesota—Counsel appointed by court on request of defendant in capital cases, and others punishable in state prison. Compensation not exceeding \$10 a day for time employed in trial.

Iowa—Defendant has the right to select his own counsel. Compensation \$20 per day in cases involving life imprisonment; \$10 per case in other cases.

Michigan—Counsel appointed in cases of misdemeanor as well as felony. Limit of compensation, not exceeding \$150 in murder cases; not exceeding \$100 in other cases.

Vermont—Counsel appointed in capital cases and state prison cases. Compensation at discretion of court.

Ohio—Court appoints counsel. Paid in murder cases such sum as the court approves; in manslaughter cases, not exceeding \$100; in other cases, not exceeding \$50.

New Hampshire—Counsel appointed and paid in cases involving imprisonment in state prison five years. Witnesses also paid.

Wisconsin—Compensation, not exceeding \$15 a day for time spent in trying the case; and not exceeding \$10 a day, not more than five days, for time spent in preparation.

Oklahoma—Court must assign counsel. Compensation, such reasonable sum as the court shall approve, not exceeding \$25.

Maryland—Court may appoint counsel in cases of misdemeanor as well as felony, when in its judgment a just regard for the rights of the accused requires it. Pay not to exceed \$100.

Nebraska—Court required to assign counsel in capital cases, and in cases punishable by punishment in the state prison. Compensation limited to \$100.

Idaho—Court may appoint counsel. Compensation, in cases of misdemeanor, \$10; murder case, \$50; other felony cases, \$25.

Wyoming—The court is required to assign counsel. Compensation, not more than \$15 in misdemeanor case; \$50 in capital case; \$25 in other felonies.

Indiana—Court must assign counsel. Paid by county.

Montana—Court must appoint counsel, regardless of nature of offense. Compensation at discretion of court, but limited to \$100 in capital cases; \$50 for other felony; \$25 in other cases.

South Dakota—Court shall assign counsel, who shall be paid a reasonable and just compensation; not exceeding \$50 in murder case; not exceeding \$25 in other cases.

Counsel Appointed Without Compensation

Louisiana—Court must, upon request of defendant, assign him such counsel as he shall desire.

Arkansas—On request of accused the court must assign him counsel, not exceeding two.

Kansas—Statute makes it the duty of the court to assign counsel, on request of defendant.

North Dakota—Defendant must be asked before arraignment, if he desires counsel. If he does, the court must make assignment.

Georgia—Statute says: "Every person charged with an offense against the laws of the state shall have the privilege and benefit of counsel." Though this does not require it, the Supreme Court says that it is the uniform practice to assign counsel.

Kentucky—No statute, but it is customary to assign counsel, and is considered obligatory in cases of special need.

Texas—In capital cases the court is required to appoint counsel, and the Supreme Court says: "It is the usual practice, and one to be commended, to appoint counsel in all felony cases."

Nevada—Accused must be informed, before arraignment, of his right to have counsel, and if so, court must assign counsel.

California—Provision is made for appointment of counsel, and Supreme Court says that appointee must serve.

Washington—At time of arraignment, if defendant says he desires counsel, and satisfies court of his inability to obtain it, court must appoint. Compensation not exceeding \$10 per day, for time actually employed in court.

Maine—Paid counsel is provided by court in cases involving life imprisonment.

Colorado—Court may assign counsel. Compensation, not exceeding \$20 in misdemeanor case; \$50 in capital case; \$30 in other felony cases.

Virginia—Counsel appointed by court in capital cases and in cases of felony punishable by death or ten years in state prison. Paid not exceeding \$25.

Pennsylvania—Court appoints counsel for indigent defendants, but without compensation.

Missouri—At request of defendant, court must assign counsel.

Utah—Defendant appearing without counsel must be informed, before arraignment, that it is his right to have counsel. If, when asked, he says he so desires, the court must assign counsel.

Oregon—If defendant appears for arraignment without counsel, he must be informed that it is his right to have counsel and must be asked if he desires it.

Illinois—If defendant states on oath that he is unable to procure counsel, courts must assign counsel.

New York—If a defendant appears for arraignment without counsel, he must be asked if he desires counsel. If so, the court must assign counsel. In

capital cases an allowance not exceeding \$500 and expenses is made. In other cases, no compensation.

New Jersey—Court is required to assign counsel to persons "not of ability to procure counsel." Compensation in homicide case—whatever the court shall allow. In other cases, none.

South Carolina—Court is required to appoint counsel for indigent defendant who so requests.

North Carolina—If defendant appears for arraignment without counsel, he must be informed of his right to counsel, and court must assign counsel if he desires.

West Virginia—"Accused shall be allowed counsel if he desire it, to assist in his defense."

Tennessee—Accused is entitled to have counsel appointed by court, if unable to procure it.

Arizona—Defendant who appears without counsel must be informed of his right to have counsel before arraignment, and if unable to employ same, court may assign some member of the bar for his defense.

Florida—"The court shall allow him counsel if he desires it." The Supreme Court says it has been the general custom to appoint an attorney to represent an indigent defendant, and that "this practice is in accord with the letter and spirit of the Bill of Rights."

Provide Specially for Capital Cases

Alabama—Court appoints counsel in capital cases. No provision for compensation.

Mississippi—In capital cases, defendant may have counsel assigned. No provision is made for compensation.

New York and New Jersey—See "Appointed Without Compensation" (above).

Public Defenders

California—Although the laws of the state require the appointment of unpaid counsel, an exception is made of Los Angeles County, one of the most populous in the state and the defense of accused persons has been vested in a Public Defender, who is a salaried officer, with several assistants.

Connecticut—In 1903, provision was made for the assignment of counsel in individual capital or life imprisonment cases. In 1907 this provision was liberalized by a provision for the appointment of a Public Defender, who conducts the defense of all cases of indigent defendants.

Omaha, Neb.—Nebraska laws authorize appointment of Public Defenders in counties with population of 100,000. Under this provision, Omaha has had a Public Defender for past four years.

Portland, Ore., has a Public Defender, who cares for the defense of all cases.

Virginia authorized the appointment Public Defenders in cities of 50,000. Under this provision Norfolk has such an officer.

Indianapolis—The statutes of Indiana require the assignment of compensated counsel for indigent defendants. Marion County employs one (salaried) attorney for all these cases. Though not called a "Public Defender," his position is like that of those so designated.

Minneapolis—Minnesota requires assignment of paid counsel. Special pro-

vision is made for appointment of a Public Defender for counties of 300,000. Under this law Hennepin County, including Minneapolis, has such an attorney, who is counsel for all indigent defendants. The work has been satisfactory.

Houston, Texas—Provision has been made in this year's budget for a Public Defender, but appointment has not yet been made.—Warren F. Spalding, Massachusetts Prison Association, Boston.

Concerning Bail.—"Paragraph Seven of Article Two of the Constitution of Illinois provides, among other things:

"All persons shall be bailable by sufficient sureties except for capital offenses, where the proof is evident or the presumption great."

"The Supreme Court in the case of *Lynch versus The People*, 38 Illinois 495, declared that one indicted for murder had a right to have the court consider such facts as he cared to present, either on motion or by way of a petition of habeas corpus, touching his being admitted to bail; but stated their views as to the rule which should govern such application in the following language:

"And while we think an inquiry into the facts should always be made upon a proper application of the prisoner, for the purpose indicated in this motion, we need hardly suggest that in view of an indictment having been found for the higher offense, courts and judges should proceed with great caution in their examination of the facts, that the prisoner may not be improperly admitted to bail, and only in case he is clearly entitled to such relief."

"It seems clear that in the cases involving capital offenses, a defendant is not entitled to bail where the proof of his guilt is evident or the presumption great. The responsibility for determining that question is, of course, with the court, but in the absence of some showing by the defendant which would raise considerable doubt as to the possibility of his conviction for murder, it would not be proper to admit to bail."—From Bulletin 2 of the Chicago Crime Commission. R. H. G.

Police Statistics.—The Police Department of Cleveland has recently gathered some interesting statistics regarding police forces and their work in the larger American cities. Through the courtesy of Miss Mary H. Clark, Librarian of that city's Municipal Reference Library, we are able to reproduce these figures herewith:

City	Estimate Popula- tion, 1918	Square Miles	Patrol- men	Offi- cers	Police Dis- tricts	Com- plaints of		Arrests State Cases	No.
						Felonies	Felonies		
Baltimore	725,000	93	842	189	..	*	*		27
Boston	750,000	63	1,505	230	19	*	*		31
Buffalo	500,000	42	708	166	14	1,063	2,257		26
Chicago	2,500,000	191	3,253	1,018	34	10,823	10,339		96
Cincinnati	410,000	70	620	89	10	4,017	454		10
Cleveland	900,000	54	800	111	15	7,409	4,370		17
Detroit	986,699	79	1,308	332	9	15,698	10,543		123
Kansas City...	380,000	58.75	312	232	10	†	1,133		24
Los Angeles ..	605,000	362	529	200	7	*	2,754		39
New Orleans...	400,000	196.25	247	13	12	†	97		29
New York City	6,006,764	316	9,173	1,410	84	31,755	23,597		47
Philadelphia ..	1,900,000	129.50	3,740	441	42	*	8,113		20
St. Louis	850,000	62.50	1,400	261	14	†	23,328		44
San Francisco.	550,000	46.07	749	183	10	6,145	2,752		17
Toledo	300,000	32	206	66	5	10,225	5,430		10
Washington ...	500,000+	70	766	88	11	3,287	2,151		15

*No record.

†Not available.

—From Municipal Reference Library Notes, Sept. 10, 1919.

MISCELLANEOUS

Committees of the Institute, 1919-1920:

Committee "A"—Insanity and Criminal Responsibility.

Edwin R. Keedy, University of Pennsylvania, Philadelphia, Chairman.

Victor Arnold, Judge of the Juvenile Court, Chicago.

Adolph Meyer, M.D., Johns Hopkins University, Baltimore.

Orrin N. Carter, Justice of the Supreme Court of Illinois, Springfield.

William E. Mikell, Dean, University of Pennsylvania Law School, Philadelphia.

A. W. Stearns, M. D., 520 Commonwealth Ave., Boston.

Morton Prince, M.D., 458 Beacon St., Boston.

William A. White, M.D., Government Hospital for Insane, Washington.

H. Douglas Singer, M. D., State Psychiatrist, Kankakee, Illinois.

Sidney Kuh, M. D., Alienist, Chicago.

Burdette G. Lewis, Commissioner of Charities and Correction, Trenton, N. J.

Harold Moyer, M. D., Chicago.

Committee "B"—Probation and Suspended Sentence.

Edith Abbott, School of Civics and Philanthropy, Chicago, Chairman.

A. C. Backus, Judge Municipal Court, Milwaukee, Wis.

Miss Minnie F. Low, 18 Selden St., Chicago.

Charles L. Chute, State Probation Commission, Albany, New York.

Homer Folks, Yonkers, N. Y.

Joel D. Hunter, Supt., United Charities, Chicago.

Thomas C. O'Brien, Deputy Commissioner of Prisons, 24 State House, Boston.

Committee "C"—Classification and Definition of Crime.

Ernst Freund, University of Chicago, Chairman.

Eugene A. Gilmore, University of Wisconsin, Madison.

Robert W. Millar, Northwestern University Law School, Chicago.

Nathan William MacChesney, 30 N. La Salle St., Chicago.

Samuel K. Dennis, United States District Attorney, Baltimore, Md.

Committee "D"—Modernization of Criminal Procedure.

Robert W. Millar, Northwestern University Law School, Chicago, Chairman.

Edwin R. Keedy, University of Pennsylvania Law School, Philadelphia.

James Bronson Reynolds, North Haven, Connecticut.

E. Ray Stevens, Ninth Judicial Court, Madison, Wis.

Lawrence Veiller, Secretary of Committee on Criminal Courts of the Charity Organization Society, 105 E. 22d St., New York.

Committee "E"—Crime and Immigration.

Miss Grace Abbott, 920 S. Michigan Ave., Chicago, Chairman.

Miss Kate Claghorn, School of Philanthropy, New York.

Robert Ferrari, of New York Bar, 2 Rector St., New York.

Bernard Glueck, M. D., State Prison, Ossining, New York.

Raymond B. Fosdick, Bureau of Social Hygiene, 61 Broadway, New York.

Committee "F"—Indeterminate Sentence; Release on Parole and Pardon.

Edward Lindsey, Warren, Pennsylvania, Chairman.

Will Colvin, State Superintendent Pardons and Parole, Springfield, Ill.

Amos W. Butler, Superintendent Charities and Correction, Indianapolis.

E. C. R. Bagley, Supt. of Prisons, Room 24, State House, Boston.

Committee "G"—Drugs and Crime.

Francis Fisher Kane, United States District Attorney, Post Office Building, Philadelphia, Chairman.

Dr. W. S. Brewster, House of Correction, New York City.

Edwin M. Abbott, Land Title Building, Philadelphia.

Dr. D. L. Stanley, Resident Physician, State Prison, San Quentin, Calif.

Committee "H"—Public Defender.

Reginald Heber Smith, 60 State St., Boston, Chairman.

Walter J. Wood, Los Angeles, Calif.

Robert O. Harris, Tremont Building, Boston, Mass.

Lindley Spender, Baltimore, Md.

James Bronson Reynolds, North Haven, Conn.

Mayer Goldman, 7 Beckman St., New York City.

Charles Edwin Fox, District Attorney, City Hall, Philadelphia.

Warren F. Spalding, 39 Court St., Boston.

Committee "I"—Metropolitan and State Police.

P. O. Ray, Northwestern University, Evanston, Ill., Chairman.

August Vollmer, Chief of Police, Berkeley, Calif.

Frederic B. Crossley, Northwestern University, Chicago.

Committee "J"—Criminal Statistics.

Dr. Horatio Pollock, Board of Health, Albany, N. Y., Chairman.

Miss Annie Hinrichsen, Secretary Commission on Public Welfare, Springfield, Illinois.

Louis N. Robinson, Probation Department Municipal Court, Philadelphia.

John Koren, Pemberton Square, Boston.

Miss Edith Abbott, School of Civics and Philanthropy, Chicago.

Thomas D. Eliot, Northwestern University, Evanston.

Committee "K"—Criminal Law and Procedure in Europe.

Dr. John R. Oliver, The Latrobe, Baltimore, Md., Chairman.

Dr. George Kirchwey, School of Philanthropy, New York.

George F. Deiser, Drexel Building, Philadelphia.

Benjamin Malzberg, University of Paris (American Fellow), 151 Rue St. Jacques, Paris (V).

Edwin R. Keedy, University of Pennsylvania Law School, Philadelphia.

John Koren, Pemberton Square, Boston.

William Healy, M.D., Judge Baker Foundation, Boston, Mass.

Committee on Translation of Treatises on Criminal Law.

John H. Wigmore, Northwestern University, 31 West Lake St., Chicago.

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