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PIONEERS IN CRIMINOLOGY

IV—Raffaele Garofolo (1852–1934)

FRANCIS A. ALLEN

In this article Professor Allen discusses Garofolo's "Criminology" and some modern problems of criminal justice. The author is Professor of Law in Harvard University. From 1948 to 1953 he was a member of the Faculty of Law in Northwestern University where he had completed his professional training in 1946. From that year until 1948 Professor Allen was Legal Secretary for the late Mr. Chief Justice Vinson of the U. S. Supreme Court. He has served in various capacities in the federal, state and local governments, including the chairmanship of the Citizen's Advisory Committee of the Illinois Sex Offenders Commission. He has published numerous articles in legal periodicals chiefly on criminal law and constitutional law topics.

The picture below is from the GREEN BAG, volume X—Editor.

For good reason it is customary to identify Raffaele Garofolo as one of the three leading exponents of the Italian school of criminology, which came into being during the closing years of the nineteenth century. The relationship with Lombroso and Ferri is clear, but it ought not to obscure the distinctive quality of Garofolo's thought or the particular range of his major interests.¹ No doubt the emphasis of his work was in large measure the product of his distinguished professional career. Born a member of the Italian nobility at Naples in 1852, he served in his mature years as a lawyer, prosecutor, and magistrate. In addition, he performed the duties of professor of criminal law and procedure in the university of his native city. But from whatever cause, there is exhibited in Garofolo's writings a consistent concern with



RAFFAELE GAROFOLO

¹ Cf. DE QUIROS, *MODERN THEORIES OF CRIMINALITY* (De Salvio trans. 1911) 28: "With the anthropologist Lombroso, the sociologist Ferri, and the jurisconsult Garofolo, the school of criminal

practical reform of the criminal law and legal institutions associated with the administration of criminal justice. This, of course, is not to say that Garofolo's inquiries failed to encompass matters of theoretical scientific interest. But even as he deals with such topics, he displays a continuing effort to relate the fruits of such investigation to the legal context and to gain insights which may be useful in the practical business of legislation and administration. This note is struck in the first paragraph of his "Criminology." Speaking of the then-recent efforts at scientific study of criminality, he observes: "But when we come to consider how this theory may be applied to legislation, serious difficulties are encountered."² Later, discussing Ferri's classification of criminal types, he concludes: "Being of no avail to legislation it is consequently without practical interest."³ It is perhaps not too much to say that this detailed concern with the concrete problems of legal and institutional reform provides the chief source of interest in Garofolo's writings for most modern readers.⁴

Although Garofolo enjoyed a long and productive scholarly career, he is known principally in this country through his major work, the "Criminology." The first edition of the book appeared in 1885 when Garofolo was only thirty-three years of age. A second Italian edition was published six years later and a French version, prepared personally by Garofolo, received a sufficiently wide response to justify several subsequent editions. The excellent English translation completed in 1914 by Professor Robert W. Millar of the Northwestern University School of Law, is based largely on the French edition of 1905.⁵

In approaching a study of the "Criminology" it is well that several general considerations be kept in mind. The work in its original version appeared some seventy years ago. Inevitably time has taken its toll. Many of the assumptions and the data upon which these assumptions are based have been placed in serious doubt by subsequent investigations. More fundamentally, the "Criminology" is in considerable degree a product of certain important intellectual currents which profoundly affected

anthropology can be considered as fully established. Hence, one of its critics has called these three men *evangelists* and their works *gospels*. From that time on they are always mentioned in a kind of trinity, a little divided at times only by Garofolo's political and penal conservatism."

² GAROFOLO, *CRIMINOLOGY* (Millar trans. 1914) 3. The work will be cited hereinafter as "Crim."

³ *Id.* at 134.

⁴ No doubt this element in Garofolo's work explains in part the highly favorable response to the English translation of the "Criminology" in American legal periodicals. See 48 AM. L. REV. 945 (1914); 14 COL. L. REV. 545 (1914); 28 HARV. L. REV. 221 (1914); 10 ILL. L. REV. 455 (1916); 63 U. OF PA. L. REV. 148 (1914); 23 YALE L. JOUR. 554 (1914). The following comment appeared in the above-cited discussion in the HARVARD LAW REVIEW at 222: "Its moderate tone and practical nature make a good preparation for the audacious theorising of Lombroso and the brilliant ingenuity of Tarde."

⁵ In the Translator's Preface to the English version, Professor Millar states at p. xiii: "The translator, however, has kept the second Italian edition constantly before him, and has found it of much service. Indeed, the interests of the English version have at times seemed to require that the Italian edition be laid under direct contribution. It is thus responsible for verbal deviations, here and there, from the French text, for some amplification of statements of fact in relation to criminal cases referred to by the author (containing, as a rule, a fuller account of such cases), and for slight additions to the foot-notes. So, also, it has considerably influenced the matter of quotations from Italian writers."

social thought during the last half of the nineteenth century and which have lost much of their power to impress the modern mind and to stir the modern imagination. The pervasive influence of social Darwinism and the speculations of Herbert Spencer are, for example, clearly discernible at almost every stage of Garofolo's argument. For modern tastes there is perhaps a too-easy assumption of the inevitability of moral progress and the beneficence of political power.⁶

But this is far from denying the continuing interest of the work and its considerable relevance to contemporary issues. For the "Criminology" contributes a full measure of significant insights which are often largely independent of the theoretical superstructure on which Garofolo built. Moreover, the essential honesty of his methods and eagerness to discipline his conclusions by a constant reference to fact does much to bridge the years. There is pleasure, too, in following his lively and often closely-reasoned argument. It is perilous to attempt evaluation of a writer's literary style in translation, but the bite of his language emerges clearly enough. Thus, commenting on certain of Lombroso's work, he states: "In his later writing the same writer contended that epilepsy is always to be found in the born criminal. This theory I shall not stop to discuss since the fact is far from being established. Moreover, it is flatly contradictory of the theory of atavism, despite Lombroso's efforts to reconcile the two theories. It seems hardly possible to conceive our first parents as unhappy epileptics."⁷

THE CONCEPT OF "NATURAL CRIME"

The starting point of any criminological system is the delimitation and definition of its subject matter. Even with the passing of the years, these basic and primary issues remain in agitation and controversy. Garofolo rightly saw, with a clarity not matched by many who came before and after him, that the prior questions to be resolved center about the proper formulation of the concept of crime—the "criminal" presupposes "crime."⁸ Thus at the outset he observes that "... although the naturalists speak of the *criminal*, they have omitted to tell us what they understand by the word *crime*."⁹

Perhaps partly in reaction to the excesses of the Austinian school, Garofolo sharply rejected as inadequate for scientific purposes the notion that crime may properly be defined as that conduct for which the law has provided penalties and has de-

⁶ Another difficulty might well be mentioned. Many of Garofolo's illustrations and much of his data relate to patterns of criminality then prevailing in southern Italy, Sicily, and Corsica. These patterns, while perhaps not entirely unique, are sufficiently atypical to increase the difficulties of critical evaluation.

⁷ CRIM. 105-106.

⁸ Cf. FERRI, *CRIMINAL SOCIOLOGY* (Kelly and Lisle trans. 1917) 77-78: "Garofolo's definition was, however, an original and happy attempt, although for my part, as Fioretti had already remarked and as I have said elsewhere, I do not feel the antecedent necessity for such a definition. In my opinion, a definition with which metaphysicians and classical jurists ever love to begin, can on the contrary only be the ultimate synthesis. It should, therefore, come at the end and not at the beginning of the researches of criminal sociology. And this is not only because the general reasons of the positive method require it; but also because the difficulty raised by opponents and combatted by Garofolo is not serious."

⁹ CRIM. at 3.

nominated criminal.¹⁰ This "juridical" conception, it is urged, fails in that it both includes and excludes behavior properly encompassed in a "sociologic notion of crime." For Garofolo only the latter is of concern to the scientific investigator; and in giving content to this sociologic notion he formulates one of his most important concepts, the idea of "natural crime." "Natural" he defines as that "... which is not conventional, ... which exists in human society independently of the circumstances and exigencies of a given epoch or the particular views of the law-maker."¹¹ In short, "natural crime" consists of that conduct which offends the basic moral sentiments of pity (revulsion against the voluntary infliction of suffering on others)¹² and probity (respect for property rights of others).¹³ The basic moral sensibilities appear in more or less advanced form in all civilized societies and are, indeed, essential to the coexistence of individuals in society. Hence, the true criminal against whom society must make defense is he who has revealed the absence or deficiency of either or both these essential moral capacities.

In further refining the concept, Garofolo makes clear that he is speaking only of the sentiments of pity and probity as manifested by the average moral sense of the community, which may fall considerably below the level of moral perception attained by the exceptional and superior members of the group. Moreover, the truly criminal act must be harmful to society.¹⁴ At first blush, Garofolo's idea of natural crime may appear as a latter-day revival of the *jus gentium*. And, indeed, he believed that for the western European countries, which had arrived at near the same level of cultural development, a true "law of nations" might be formulated in the penal area, as evidenced by his draft of suggested principles for an international penal code.¹⁵ Nevertheless, as he makes clear, the concept of natural crime does not consist of a catalog of acts which are universally or widely conceived to be criminal. History, chance, and the varying levels of social development have produced great differences in the kinds of overt behavior characterized as crime at various times and places. The uniformity lies rather in the basic altruistic sentiments of mankind; and true crime is that conduct which, upon evaluation by the average moral sense of the particular society under consideration, is deemed offensive to those sentiments.¹⁶

One further point of clarification needs to be stated. Garofolo does not intend to limit offenses recognized by any government to those included in the category of natural crime. He assumes that a great variety of other offenses will be defined and

¹⁰ See especially Chapter II "The Legal Notion of Crime." *Id.* at 54 *et seq.*

¹¹ *Id.* at 4.

¹² *Id.* at 23 *et seq.*

¹³ *Id.* at 31 *et seq.*

¹⁴ Garofolo summarizes his position in the following manner: "From what has been said . . . , we may conclude that the element of immorality requisite before a harmful act can be regarded as criminal by public opinion, is the injury to so much of the moral sense as is represented by one or the other of the elementary altruistic sentiments of *pity* and *probity*. Moreover, the injury must wound these sentiments not in their superior and finer degrees, but in the average measure in which they are possessed by a community—a measure which is indispensable for the adaption of the individual to society. Given such a violation of either of these sentiments, and we have what may properly be called *natural crime*." *Id.* at 33–34.

¹⁵ See Part IV: "Outline of Principles Suggested as a Basis for an International Penal Code." *Id.* at 405 *et seq.*

¹⁶ *Id.* at 6–10.

punished. Indeed, he makes the rather extraordinary assertion that "Beyond question, every disobedience to law should be attended with a penal sanction. . . ."¹⁷ In this connection, however, he advances the interesting suggestion that in the statutes such "police offenses" might better be included in a code separate from that dealing with natural criminality.¹⁸ But for Garofolo, the chief function of the natural crime concept is to delimit the area of conduct of major, perhaps exclusive, concern to the scientific criminologist.¹⁹

Garofolo's concept of natural crime has, as might be expected, produced its critics and its qualified disciples.²⁰ It is based fundamentally on the idea that for scientific purposes, the concept of crime cannot be accepted as a legal category since the factors which produce the legal definitions of crime are contingent and capricious and display no consistent, unifying principle.²¹ The motivation is clear; and yet, it may be doubted that so complete an elimination of the legal content of the concept has well served the development of criminological theory.²² Certainly, the efforts to obtain agreement on a definition of crime in purely naturalistic terms have not proven conspicuously successful as the controversies which continue to agitate theory demonstrate.²³ The condemnation of conduct through the political agencies is a relevant social fact of the greatest importance. Any theoretical system which ignores or unduly minimizes considerations of such relevance and importance is likely to produce results which are partial and unsatisfactory. Moreover, this tendency may produce positive dangers in its practical applications. For a consideration of measures which impose stringent disabilities on individuals cannot safely be isolated from the legal and political values. Even within the assumptions of his concept of natural crime, Garofolo cannot escape legitimate criticism. Thus it is probably true that an analysis which attaches the idea of criminality only to violations of the moral "sentiments" of pity and probity is incomplete²⁴ and insufficiently sophisticated. One doubts, for example, whether the particular horror often associated with certain kinds of sexual offenses can be completely or adequately explained as a manifestation of pity for the victim.²⁵ Nor do these categories comfortably encompass serious political

¹⁷ *Id.* at 34.

¹⁸ *Id.* at 59.

¹⁹ This is perhaps stated most clearly in *Id.* at 47.

²⁰ See, e.g., DE QUIROS, *op. cit. supra* note 1 at 28; FERRI, *op. cit. supra* note 8 at 80; TARDE, *PENAL PHILOSOPHY* (Howell trans. 1912) 69 *et seq.* And see HALL, *GENERAL PRINCIPLES OF CRIMINAL LAW* (1947) 547 *et seq.*; Tappan, *Who Is the Criminal?* 12 AM. SOC. REV. 96 (1947).

²¹ See, e.g., CRIM. at 4. And note the comment of Tarde, *op. cit. supra* note 20 at 72: "The most striking thing to be here observed is the sight of an evolutionist making this desperate effort to attach himself to some fixed point in this unfathomable flood of phenomena and cast anchor exactly in what is the most fluid and evasive thing in the world, that is to say, feeling."

²² See LLEWELLYN, *Law and the Social Sciences—Especially Sociology*, 62 HARV. L. REV. 1286, 1287 (1949).

²³ See TAPPAN, *op. cit. supra* note 20.

²⁴ FERRI, *op. cit. supra* note 8 at 80.

²⁵ Cf. "In other words, a failure to punish a criminal is a kind of threat to the repressions which each person places upon his own *id.*" GRIFFITH, *AN INTRODUCTION TO APPLIED PSYCHOLOGY* (1934) 265, quoted in Harno, *Rationale of a Criminal Code*, 85 U. OF PA. L. REV. 549 (1937). An interesting account of public reaction in early nineteenth-century England to prisoners condemned to the pillory for the crime of homosexuality may be found in ARMITAGE, *HISTORY OF THE BOW STREET RUNNERS* (1933) 175-180.

crime, particularly in a period of intense political conformity when conceptions of morality are identified in significant measure with patriotic sentiments.²⁶

Nevertheless, Garofolo's concern with actual problems of legislation and administration, already noted, tends to counterbalance many of the more dubious tendencies of his theory. Furthermore, in emphasizing the relevance of "moral sentiment" to the problem of defining criminal behavior, the concept of "natural crime" has a continuing relevance, even though probably not precisely that which Garofolo intended. Certainly, the modern legislator, with Garofolo, can gain little solace or assistance from the shibboleth that crime is whatever the legislature says it is. For the legislator, particularly at a time when governmental power invades more and more aspects of social life, there are few problems of policy more pressing than identifying and reconciling the social interests to be protected by political power, determining which of these interests can sensibly be defended by criminal sanctions, and designing such sanctions in the form most likely to attain the desired ends.²⁷ No perceptive legislator believes that he is completely at large in this area. There are certain regularities of social and individual behavior which can be ignored only at peril. Garofolo's identification of serious criminality with immorality suggests one of these limiting factors.²⁸ His distinction between the "natural" crimes and the "police offenses" points to one of the most serious problems confronting the expanding welfare state,²⁹ however imperfectly he may have understood the complexities of policy in the latter category of offenses.³⁰ Finally, his insistence that there are problems here which demand systematic investigation of the underlying facts of social and individual behavior produces an emphasis of a value which has not diminished with the passing of the years.

CHARACTERISTICS OF THE CRIMINAL

In Garofolo's theoretical system, the concept of natural crime serves the primary end of identifying the true criminal against whom measures of social defense must

²⁶ Garofolo deals at some length with political crimes and notes that "... the act which is normally a political crime may become a natural crime when a society suddenly returns to a condition in which the collective existence is threatened." Writing in a happier time he optimistically observes: "But at the present day the state of war is a crisis of short duration. As pacific activity succeeds to predatory activity, the morality of the state of peace succeeds to that of war, ..." "Crim." at 39.

²⁷ See MICHAEL AND ADLER, *CRIME, LAW AND SOCIAL SCIENCE* (1933) 23-26, 352-361.

²⁸ Garofolo's fellow-countryman, Beccaria, had written perceptively on these matters a century-and-a-quarter earlier. See especially Chapter XXXIII of the latter's *CRIMES AND PUNISHMENTS* (1764. Eng. printing, 1872) 126-129, the opening sentences of which observe: "Smuggling is a real offence against the sovereign and the nation; but the punishment should not brand the offender with infamy, because this crime is not infamous in the public opinion. By inflicting infamous punishments, for crimes that are not reputed so, we destroy the idea where it may be useful. If the same punishment be decreed for killing a pheasant as for killing a man, or for forgery, all difference between those crimes will shortly vanish. It is thus that moral sentiments are destroyed in the heart of man; ..." "

²⁹ CLINARD, *THE BLACK MARKET* (1952); Hall, *op. cit. supra* note 20 at 279; JACKSON, *Absolute Prohibition in Statutory Offenses*, 6 *CAMB. L. JOUR.* 83 (1936); LEE, *The Enforcement Provisions of the Food, Drug, and Cosmetic Act*, 6 *L. AND CONT. PROB.* 70 (1939); PERKINS, *The Civil Offense*, 100 *U. OF PA. L. REV.* 832 (1952); SAYRE, *Public Welfare Offenses*, 33 *COL. L. REV.* 55 (1933).

³⁰ See note 17 *supra*.

be taken. Natural crime is behavior which violates certain basic moral sentiments. The true criminal is he whose altruistic sensibilities are lacking or are in a deficient state of development. The concepts of crime and the criminal are thus integrally related. Garofolo, to be sure, makes clear his conviction that "our knowledge of the criminal is not limited to his acts."³¹ But it is perhaps this joining of the ideas of crime and criminal which, leads to the frequent emphasis on the act as a primary index of criminality. In this respect Garofolo's assumptions often tend to approach those of classical criminology, however much they may diverge in other particulars.³²

It is not surprising that in his efforts to delineate the characteristics of the true criminal, Garofolo should turn first to the views of the criminal anthropologists, particularly those of Lombroso. It is clear that Garofolo approached with great interest and considerable sympathy the then-current efforts to demonstrate the association of criminality with certain anatomical and physiological characteristics.³³ He finds, for example, that the undue size of the mandibles is "an unmistakable sign of brutality or violence"³⁴ and that it is "generally admitted that in criminals, the occipital region exhibits a much greater development than the frontal region."³⁵ Nevertheless, on the whole, his treatment of these matters reveals commendable caution and a healthy detachment. His ultimate conclusion was that the theories describing the criminal as a distinct anthropological type had not yet been proved. "But what criminal anthropology really lacks," he asserts, "... is convincing proof that a given character of the skull or skeleton is found more often among criminals than among persons presumably honest."³⁶ After reporting the frequency of striking degenerative or regressive characteristics in murderers under his observation, he adds: "Still, these characteristics are not always the same: sometimes it is one which is present, sometimes another. The murderer type cannot be described anthropologically."³⁷ He was aware, also, of the difficulties inherent in validating hypotheses in this area, for he notes the problem of accurately identifying the criminal and non-criminal "pair" for the purposes of trustworthy comparison.³⁸

Having found the emphasis of Lombroso's theories inadequate for his purposes, Garofolo advances his second major concept, the idea of psychic or moral "anomaly."

³¹ CRIM. at 66.

³² See e.g., Beccaria, *op. cit. supra* note 28. This parallelism is most clear in Garofolo's discussion of the murderer and violent offender, less clear in his treatment of the offender against property rights. Thus, as to the latter, he writes: "What! some one may exclaim, 'Would you make no distinction in punishment between the man who has stolen twenty francs and the man who has stolen but twenty centimes?'"

"My answer is that I do not know, for the question is one which cannot be decided abstractly. The thing important here to determine is—which one of these two thieves has the greater criminal aptitude, and is thus the greater danger to society? It may well be the former, but it may quite as well be the latter." CRIM. at 299.

³³ A survey of modern work in this area is presented in Snodgrass, *Crime and the Constitution Human: A Survey*, 42 J. CRIM. L. AND CRIMINOLOGY 18 (1951).

³⁴ CRIM. at 71.

³⁵ *Id.* at 67.

³⁶ *Id.* at 74.

³⁷ *Id.* at 77. —

³⁸ *Id.* at 75.

The true criminal lacks a proper development of the altruistic sensibilities. This lack or deficiency is not simply the product of circumstance or environmental conditioning but has an organic basis. For Garofolo "There is no such thing as the casual offender—if by the use of this term we grant the possibility of a morally well-organized man committing a crime solely by the force of external circumstances."³⁹ Moreover, the moral anomaly is to be carefully distinguished from insanity or mental disease. The former is not a pathological condition but rather a "psychic variation" appearing much more frequently among members of "certain inferior races" than in modern civilized societies.⁴⁰ That the moral anomaly is hereditarily transmissible he finds "established by unimpeachable evidence."⁴¹ But the precise physical basis of the moral anomaly he is unable to describe.⁴² At times he refers to it as the product of "some mysterious atavism."⁴³ At others, as the result of moral degeneracy of more recent origin.⁴⁴ Ultimately, he says, "The only safe conclusion which we are justified in forming is that criminals have regressive characteristics—characteristics which indicate a degree of advancement lower than that of their neighbors."⁴⁵

It is apparent that these ideas tend to relegate the social and environmental factors of criminality to positions of secondary importance. Clearly, too, such assumptions profoundly affected Garofolo's conclusions as to practical measures of crime prevention and repression. He regarded education as chiefly determinative of the kinds of crime committed rather than as an agency for elimination of crime.⁴⁶ He was skeptical of economic distress as a cause of crime though, again, he did not deny that economic conditions may affect the form in which crime is manifested.⁴⁷ To sound family environment and religious instruction, especially when directed

³⁹ *Id.* at 95–96. And see: "Hardly anything could be more inaccurate, in my opinion, than the adage: 'Occasion makes the thief.' To be true, the phrase should be: 'Occasion enables the thief to steal.'" *Id.* at 226.

⁴⁰ *Id.* at 99–105.

⁴¹ *Id.* at 92. For the modern reader, the evidence for the hereditary transmissibility of criminal propensities adduced by Garofolo often seems particularly inconclusive and the conclusions derived therefrom at times naive and unsophisticated. Certainly, these conclusions often appear to ignore alternative explanations which in the absence of conclusive evidence are at least equally persuasive. Thus after noting the allegedly higher frequency of criminality among children of elderly parents, he seems to attribute this phenomenon exclusively to the hereditary transmission of psychic traits attributable to old age. *Id.* at 93.

⁴² "We shall therefore leave the anatomic aspect of the subject and direct our attention to the criminal's psychic anomaly, without admitting or denying that this latter may have a purely physical source." And in a footnote he quotes with approval a statement attributed to Benedikt "We are very far from possessing an anatomy of molecules." *Id.* at 79.

⁴³ *Id.* at 99–102, 105–111.

⁴⁴ *Ibid.*

⁴⁵ *Id.* at 109.

⁴⁶ *Id.* at 137–140.

⁴⁷ *Id.* at 142–165. "From what has been said up to this point, the two following conclusions may be drawn: "(1) The present economic order, that is to say, the distribution of wealth, as it exists today, is not a cause of criminality in general. (2) The fluctuations which are wont to occur in the economic order may bring about the increase of one form of criminality, but this increase is compensated by the limitation of another form. These fluctuations are, therefore, possible causes of *specific criminality*." *Id.* at 164.

to the child of tender years, he attributed more significance as preventive factors.⁴⁸ But even the latter elements were hardly conceived as of first importance. "Without doubt," Garofolo writes, "external causes such as tradition, prejudices, bad examples, climate, alcoholic liquors, and the like are not without important influence. But in our opinion, there is always present in the instincts of the true criminal, a specific element which is congenital or inherited, or else acquired in early infancy and become inseparable from his psychic organism."⁴⁹ Nevertheless, these "external factors," even if of secondary importance, must be taken into account. He did not doubt that the manifestation of even the innate criminal propensities can often be repressed by "a favorable concurrence" of external circumstances.⁵⁰ The devising of appropriate measures of repression thus becomes the practical problem of central concern.

But in Garofolo's view, the organic deficiency in moral sensibilities, characteristic of true criminality, varies in significant degree from one criminal to another. These variations make necessary a more particular classification of criminal types before intelligent consideration of repressive measures is possible; for differences in the types require differences in the measures to be applied. Garofolo identifies four basic criminal classes which, though distinct, are yet related in that each is characterized by a deficiency in the basic altruistic sentiments of pity and probity. These four classes are those of (1) the murderer, (2) the violent criminal, (3) the thief, and (4) the lascivious criminal.⁵¹

The murderer is the man in whom altruism is wholly lacking.⁵² The sentiments of both pity and probity are absent, and such a criminal will steal or kill as the occasion arises. This extreme form of the moral anomaly is frequently revealed in the very circumstances of the crime committed. The lesser criminals, on the other hand, may be more difficult to identify; and here psychologic and anthropologic examination may be required to assist in his proper classification. These lesser offenders fall into two major groups: violent criminals, characterized by the lack of pity, and thieves, indicated by lack of probity. The violent criminal may often be guilty of offenses against the person of the type particularly characteristic of a given locality. Such crimes Garofolo terms endemic offenses.⁵³ Admittedly, these patterns of criminal behavior are strongly influenced by environmental factors. But though imitation plays a significant part in such acts, the offender is an abnormal man, as evidenced by the fact that even where endemic criminality is rampant, such offenses are committed by a small minority of the population. The violent criminal may also commit crimes of passion, sometimes under the influence of alcohol. For Garofolo, such crimes, committed in a fit of anger, are indicative of inferior innate moral capacities. "Moreover," he adds, "it has been my uniform experience as a criminal magistrate that men who have taken life under the influence of liquor are nearly always persons

⁴⁸ *Id.* at 140-141.

⁴⁹ *Id.* at 95.

⁵⁰ *Id.* at 97.

⁵¹ *Id.* at 111-134.

⁵² *Id.* at 111-112.

⁵³ *Id.* at 112-115.

who had sustained a previous bad character or had been formerly convicted of similar offenses."⁵⁴

Garofolo recognizes that the thieves, his second major subdivision of lesser criminals, may be more the product of social factors than the criminals in other classes.⁵⁵ Certain environments, particularly, contribute to crimes against property. "The limits of such an environment need not be wide;" he writes, "two or three evil companions, sometimes a single intimate friend are sufficient to lead a youth into this sort of crime."⁵⁶ Nevertheless, many manifestations of such behavior can only be attributed to "a remote atavism" and, in other cases, to a general deficiency in "moral energy." Finally, there is the rather amorphous category of lascivious criminals.⁵⁷ Many sexual offenders, he recognizes, must be classified among the violent criminals. The behavior of others is the result of mental disorder. But fitting comfortably in neither category is a group of sexual offenders, requiring separate classification, whose conduct is characterized less by the absence of the sentiment of pity than by a low level of moral energy and deficient moral perception.

THEORIES AND MEASURES OF SOCIAL DEFENSE

In a sense, all of Garofolo's major concepts relating to crime and the criminal may be taken as providing the preliminary groundwork for his consideration of social defense against criminality. Almost the entire second half of the "Criminology" is devoted to a study of the theories and measures of crime prevention and repression. For the modern reader, this portion of the work contains some of Garofolo's most interesting and perceptive pages.

Garofolo's starting-point in considering the problems of intelligent community response to crime is revealing, for he founds his thought on one of those analogies characteristic of the social Darwinism of his day. In nature, through the processes of natural selection, the penalty for lack of adaptation is elimination. The true criminal by the absence or deficiency of the basic altruistic sentiments similarly demonstrates his "unfitness" or lack of adaptation to his social environment. Elimination from the social circle is thus the penalty indicated. "In this way, the social power will effect an artificial selection similar to that which nature effects by the death of individuals inassimilable to the particular conditions of the environment in which they are born or to which they have been removed. Herein the State will be simply following the example of Nature."⁵⁸

Whatever may be said concerning the integrity of the analogy so drawn, it clearly produces assumptions of the greatest importance in Garofolo's thought. In the first place, the emphasis on elimination results in a theory of penalties or treatment which makes incapacitation of the criminal the consideration of central importance. Thus, at the outset, deterrence of potential offenders and reformation of the criminal are relegated to positions of secondary or incidental significance. Second, the analogy

⁵⁴ *Id.* at 117.

⁵⁵ *Id.* at 125-130.

⁵⁶ *Id.* at 127.

⁵⁷ *Id.* at 130-131.

⁵⁸ *Id.* at 219-220.

relating criminal penalties to "natural selection" is suggestive of the types of penalties which may properly be imposed and, perhaps, serves as a kind of moral justification for criminal punishment by identifying it with the scheme of the natural universe.

It is upon these basic assumptions that Garofolo constructs his program of criminal sanctions. Although his proposals are elaborated at considerable length,⁵⁹ they can be stated in their essence rather succinctly. The fundamental purpose to be sought is the elimination from society of those who because of moral anomaly are incapable of social adaptation. The surest and most efficient form of elimination is death. And death is the sanction clearly indicated when the offender has demonstrated his complete absence of moral sensibilities and who is hence "forever incapable of social life."⁶⁰ While there should be no hesitation to apply the death penalty in such cases, the moral sentiments of the community will not permit its imposition on offenders in whom the psychic anomaly appears in less extreme form. For, as Garofolo observes, "the death penalty has always excited public indignation when inflicted for offenses not seriously violating the moral sense."⁶¹ For these lesser offenders some measure of adaptation is always possible, and the practical problem is to find the environment which will make adaptation probable. Here again, the question is one of degree, and elimination may be relative as well as absolute. There are some who, like certain types of violent criminals, professional thieves, and habitual criminals in general, are incompatible with any civilized environment. Elimination in these cases must take the form of life imprisonment or overseas transportation. The latter, where available, is much to be preferred on the grounds both of security and humanity.⁶² In dealing with young offenders and those whose behavior has been strongly influenced by environmental factors, commitment for indefinite periods in penal agricultural colonies may be indicated.⁶³ There are also cases where elimination need go no further than expulsion of the offender from his particular social situation which may accordingly involve the permanent loss of rights to practice a given profession (where those rights have been abused) and the denial of certain civil and legal privileges.⁶⁴ Finally, there are offenders who have committed true crimes but in whom the moral anomaly has revealed itself much less clearly. Here the appropriate sanction is enforced reparation. Damages are to be assessed in sufficient amount not only adequate for complete indemnification of the injured party but to cover the expenses incurred by the state as a result of the offender's dereliction. If the offender's means are inadequate, his labor must be devoted to the required reparation.⁶⁵

⁵⁹ *Id.* at 220-29. And see the final chapter of the work entitled *THE RATIONAL SYSTEM OF PUNISHMENT*, *Id.* at 372 *et seq.*

⁶⁰ *Id.* at 224.

⁶¹ *Id.* at 223.

⁶² *Id.* at 224-225.

⁶³ *Id.* at 225.

⁶⁴ *Ibid.*

⁶⁵ Garofolo's idea of "enforced reparation" is one of his most interesting contributions. Included as an appendix to the English translation is a paper on the subject submitted by him to the International Penitentiary Congress of Brussels in 1900. *Id.* at 419-435. *Cf. LEX, Restitution or Compensation and the Criminal Law*, 34 *LAW MAG. AND REV.* 286 (1909); BATES, *PRISONS AND BEYOND*

Even this brief recital of Garofolo's program of repressive measures casts considerable light on his purposes and assumptions. There is revealed, for example, his conviction that the legal sanctions ought to be modeled upon consideration of the psychic characteristics of the particular offender, as well as his dissatisfaction with the conventional penal measures in this respect. As disclosed by his advocacy of the completely indeterminate sentence and particularly the expansion of capital punishment, stern penalties were for him an essential ingredient of a rational criminal code. That he desired as broad a use of the death penalty as has sometimes been supposed is less clear, however; for he does not estimate the fraction of the total criminal population consisting of those totally bereft of altruistic sentiments which make up the class eligible for capital punishment.

But a satisfactory appraisal of Garofolo's thought on these matters requires a more particular examination of his theories of punishment and his analysis of competing penal philosophies. A comparison of his position with certain of the postulates of classical criminology may be particularly instructive. Garofolo at the outset reveals fundamental theoretical differences with the classical school in his unequivocal rejection of the idea of moral responsibility as a basis for criminal liability. Consistently with the positivist position,⁶⁶ he rejects the notion of freedom of the will and accepts a thorough-going determinism.⁶⁷ To Garofolo the idea of moral responsibility is basically inconsistent with the objective of social defense, for it is the offender least capable of making and acting upon moral judgments who is most dangerous to social interests. "... [W]hen we undertake to ascertain whether a man is really responsible for what he does," he writes, "we always end by discovering that he is not. It is the fallacy which pervades the entire system that the present ineffectiveness of repression is due. The whole blame rests upon the two principles of moral responsibility and penal proportion."⁶⁸

Since Garofolo's day the concept of responsibility has proved a persistent source of acrimony and controversy.⁶⁹ Without agitating these issues further, it may be relevant to suggest that the explicit rejection of the idea of moral responsibility presented Garofolo with certain theoretical difficulties and to question whether he

(1938) 292-294; MICHAEL AND WECHSLER, *CRIMINAL LAW AND ITS ADMINISTRATION* (1940) 537-540. The views of Bentham on "pecuniary satisfaction" also provide an interesting comparison. See BENTHAM, *THEORY OF LEGISLATION* (Eng. ed. 1871) 282 *et seq.* It should be noted that Bentham receives only one rather disparaging reference in the *CRIMINOLOGY* (at p. 55), and Garofalo demonstrates no great familiarity with his work.

⁶⁶ Cf. the statement of Ferri in his chapter entitled "The Positive School of Criminology": "Positive psychology has demonstrated that the pretended free will is a purely subjective illusion." FERRI, *op. cit.* *supra* note 8 at 38.

⁶⁷ *CRIM.* at 273-287. Compare the statement of one of the leading Italian exponents of the classical school in Carrara, *PROGRAMMA DEL CORSO DE DERECHO* (Span. ed. 1925) 31 quoted in Amadeo, *SCHOOLS OF PENAL THOUGHT REFLECTED IN MODERN PENAL LEGISLATION* 5: "I do not waste my time in philosophical questions, I presuppose the existence of the free will and the moral culpability of man, because without it is impossible to build a criminal science."

⁶⁸ *CRIM.* at 337.

⁶⁹ The enormous literature in this field is familiar and requires no citation. Attention may be called, however, to a recent discussion: "Criminal Responsibility and Psychiatric Expert Testimony," *Comm. on Psych. and Law of the Group for the Advancement of Psychiatry* (May, 1954).

succeeded in consistently maintaining the determinism he asserted. Given the important role of the "moral sentiments" in his conceptions of both crime and the criminal, Garofolo's determinism produced for him the formidable task of separating the idea of morality from that of moral responsibility. He approaches this task by advancing what might be termed an esthetic theory of moral values. We feel admiration for physical virtues such as beauty, strength and grace, and are repelled by the absence of these qualities quite independently of whether the individual possessing any of these traits is free to have other virtues or defects. This is equally true of the moral qualities. "The praise of virtuous and the blame for vicious acts really presents the same case. . . . 'Merit' and 'demerit' have always relation to acts dependent upon moral qualities. The words themselves require no change. All that is needed is a correct understanding of their meaning."⁷⁰ An interesting test of Garofolo's position relates to the treatment of the insane criminal. Garofolo emphatically insists that although the insane offender is a criminal⁷¹ and may be quite as dangerous as any other offender, capital punishment must not be imposed upon him. This withholding of the death penalty, completely consistent with the classical conception of responsibility, would appear, at least initially, to involve Garofolo in contradiction. But Garofolo denies any inconsistency. A necessary requirement for the imposition of capital punishment, he says, "is that sympathy for the criminal has ceased to exist."⁷² What is the source of this sympathy for the insane man which persists despite the danger of his acts? Garofolo first replies that we recognize in him a potential capacity for social life: "Insanity does not engender a permanent moral character: the perversity in this case is transient and capable of change."⁷³ But surely, many insane offenders, under the present state of knowledge, display at least as unfavorable a prognosis as those whom he would consign to the death penalty. Garofolo's ultimate refuge seems to lie in the almost metaphysical distinction "between the natural instincts innate in the individual, the instincts which go to make up his real or irreducible character, and [in the case of the insane] the adventitious instincts resulting from physical deterioration."⁷⁴

In turning to the explicit consideration of competing penal philosophies, the modern reader will discover some of Garofolo's most interesting insights. Naturally enough, he rejects the idea of vengeance or moral expiation as a sufficient theoretical basis for penal sanctions.⁷⁵ The idea that punishment will produce a moral regeneration of the offender through remorse and repentance fails because, by his very nature, the true criminal lacks the moral capacities the theory assumes. Nevertheless,

⁷⁰ CRIM. at 304-305.

⁷¹ In discussing the criminal accountability of the insane, Garofolo distinguishes between those whose mental illness has completely destroyed the capacity for ideation and those in whom "the faculties of ideation" are not altogether destroyed. The idea of criminality would not attach to the former: "For unless act corresponds with intention, crime does not exist." *Id.* at 280. Even as to the latter who would be labeled criminal, special methods of treatment would be applied. Cf. FERRI, *op. cit.* *supra* note 8 at 356-363.

⁷² CRIM. at 282.

⁷³ *Id.* at 283.

⁷⁴ *Id.* at 284.

⁷⁵ *Id.* at 230-239.

he finds sound historical basis for the notion that criminal penalties represent in some measure a manifestation of socialized vengeance. Nor is he at all hostile to the sense of outrage and repugnance produced in honest men by the true criminal. For the feeling of outrage provides the social mechanism through which the rational goal of elimination is reached, however imperfectly this may be understood by the public at large.⁷⁶

Garofolo's conception of criminality as something organic and innate in the offender leads, as might be expected, to a considerable skepticism of the possibilities of reformation through education or other modes of treatment.⁷⁷ Actually, some of his proposals, already noted, for handling offenders whose crimes reveal a considerable environmental influence are perhaps more in accord with the reformatory ideal than he himself suspected.⁷⁸ Moreover, his emphasis on the individualization of punishment has probably placed his influence, in the long run, on the side of the correctionalist goals. Nevertheless, his criticism of the reformatory theory is an essential part of his thought, and his observations on this subject even yet supply a useful antidote for the more utopian and irresponsible assertions of some of the correctionalists. At the outset he avoids the error, too often committed, of conceiving that any system of enforced treatment, whatever its motives and purposes, can be stripped of punitive aspects. "The mere deprivation of liberty, however benign the administration of the place of confinement, is undeniably punishment."⁷⁹ He notes, furthermore, that the existence of other social goals and values places limits on what may be done in the interest of reformation, assuming that the latter can be accomplished.⁸⁰ Nor should the prosaic problems of the public purse or the matter of personnel be ignored. "Where are we to find a sufficient number of these soul-physicians?" he asks. "And what of the expense of such an undertaking?" And would the

⁷⁶ "Public sentiment thus coincides with the rational method of social reaction and, perhaps unconsciously, has no other tendency than that of bringing about the same effect. It is important however, to notice that this tendency is not the direct result of any process of reasoning by which is demonstrated the social utility of elimination. . . ." *Id.* at 234.

⁷⁷ *Id.* at 255-269.

⁷⁸ It should be noted, also, that, to a degree not often fully appreciated, the reformatory goal was given recognition by the classical criminologists. In this connection, see Bentham, *op. cit. supra* note 65 at 338-339: "It is a great merit in a punishment to contribute to the *reformation of the offender*, not only through the fear of being punished again, but by a change in his character and habits. This end may be attained by studying the motive which produced the offense, and by applying a punishment which tends to weaken that motive. A house of correction to fulfill this object, ought to admit a separation of delinquents, in order that different means of treatment may be adapted to the diversity of their moral condition." (Italics in the original.)

⁷⁹ *CRIM.* at 256.

⁸⁰ "All this no doubt is very admirable. It is based, however, upon an utterly false notion of State omnipotence. It completely ignores the fact that society, like any natural organism, undergoes a development which is slow and gradual, a development in which the law-maker is a minimum factor. But what of the practical side of the question? Has this, at least, been approached? For if crime is a symptom and its cause is recognizable, it is the business of a good system of social therapeutics to deal with this cause, provided that it is capable of yielding to treatment. In this lies the whole question: What are the means?" *Id.* at 179. Speaking of Ferri's program of "penal substitutes," Garofolo states: "His plan involves nothing less than the complete making over of a whole system of social and economic legislation." *Id.* at 182. And compare Dession, *Psychiatry and the Conditioning of Criminal Justice*, 47 *YALE L. JOUR.* 319, 339-340 (1938).

cure effected by this "moral therapy" survive the offender's return to his old haunts? Fundamentally, however, Garofolo's objections are based on his conviction of the fixity of character types. His hopes for substantial progress were largely confined to reformatory programs of the Elmira type directed to the very young offender.⁸¹

But perhaps most interesting and significant is Garofolo's analysis and criticism of the classical theories of deterrence.⁸² Although he ultimately rejects the deterrence of potential offenders as an adequate theoretical basis for criminal penalties, he reveals a more perceptive understanding of the theory than often displayed by its critics. He recognizes, at the outset, that justification for the deterrent theory need not be rested solely on the direct intimidatory effect produced on potential offenders by the threat of penal sanctions. Rather, in more subtle fashion the criminal penalties may regulate behavior by producing and reinforcing general moral attitudes toward certain forms of conduct. Thus the law, by making such behavior unrespectable, subjects the individual to powerful extra-legal sanctions. "No doubt for many persons, the consciousness of the evil involved would destroy any pleasure which the criminal act might afford and is therefore sufficient to cause abstention from crime. But even these persons involuntarily think of the extra legal social reaction attendant upon the offense, namely, by their honest neighbors; and this thought is continually strengthening their resolution to abstain from the acts in question."⁸³ Without the stimulus of these sanctions, the moral sentiments "would tend to weaken and even, in the course of time, might altogether disappear."⁸⁴

It is apparent, therefore, that in this regard Garofolo's rejection of the position of classical criminology was by no means complete. Indeed, an important part of his justification for the use of the death penalty in proper cases is the assumed intimidatory result.⁸⁵ Nevertheless, deterrence, while an important and desirable effect of criminal penalties, cannot be accepted by Garofolo as the proper criterion of punishment. This conclusion is reached on the interesting ground that the deterrent theory offers no clear standards by which either the kind or amount of punishment can be determined.⁸⁶ How is the legislature to measure in advance the quantum of punishment necessary to prevent a given form of conduct in the various social circumstances in which it may appear?⁸⁷ How is the danger to social interests

⁸¹ CRIM. at 266-267.

⁸² *Id.* at 239-251.

⁸³ *Id.* at 241. Compare the statement of Stephen quoted in ANDENAES, *General Prevention—Illusion or Reality?* 43 J. CRIM. L. AND CRIMINOLOGY 176, 189 (1952): "Some men, probably, abstain from murder because they fear that if they committed murder they would be hanged. Hundreds of thousands abstain from it because they regard it with horror. One great reason why they regard it with horror is that murderers are hanged with the hearty approbation of all reasonable men."

⁸⁴ CRIM. at 242.

⁸⁵ *Id.* at 377-378.

⁸⁶ *Id.* at 245 *et seq.*

⁸⁷ These difficulties did not escape the classical writers. See, e.g., BECCARIA, *op. cit. supra* note 28 at 30: "If mathematical calculation could be applied to the obscure and infinite combinations of human actions, there might be a corresponding scale of punishments, descending from the greatest to the least; but it will be sufficient that the wise legislator mark the principal divisions, without disturbing the order, lest crimes of the *first* degree, be assigned punishments of the *last*." (Italics in the original.)

of such behavior to be reflected proportionately in the penalties applied? This inherent uncertainty may result either in an excess or a deficiency of punishment. In times of stress and insecurity the effort to deter may result in draconian measures with consequent injury to individual and social interests. On the other hand, the stipulation of the quantum of punishment in advance often requires the release of still-dangerous offenders to the community. For Garofolo, the only rational criterion is that which measures the penalty by reference to the characteristics of the particular offender.

Certainly, Garofolo's analysis of deterrence has point and relevance. The difficulties he suggests are real. Although the assumptions of the deterrent theory continue to dominate most criminal legislation, there has been little systematic effort to test and validate these assumptions through empirical study.⁸⁸ Few today would assert that considerations of deterrence are in themselves adequate for the construction of a modern system of criminal justice. Nevertheless, it may properly be asked whether in some measure these uncertainties, which Garofolo deplures, are not inherent in any program of action and whether he adequately appreciated the difficulties of his own position. In the first place, it should be noted that for the vast area of penal regulation falling outside the confines of "natural crime," Garofolo fully embraces the deterrent theory with all its infirmities.⁸⁹ Second, it seems clear that Garofolo never fully appreciates the problematical nature of identifying and evaluating those criminal characteristics in the individual which make him a threat to the community. As already noted, Garofolo would identify the extreme criminal primarily by consideration of the criminal act; and in this respect he approaches the position of classical criminology.⁹⁰ The lesser criminal, however, is to be identified, at least in part, through anthropologic and psychologic examination. But little effort is made to demonstrate the adequacy of existing scientific knowledge and techniques for these purposes. The reader is confidently assured that "criminology is quite capable of" making these discriminations.⁹¹ At another point, Garofolo refers to "what might be called the queen of proofs—an hereditary history of vice, madness or crime," as indicating something of the method he contemplates.⁹² It is difficult to escape the conclusion that his assurances are based on incomplete demonstration. One need not deny the relevance of scientific knowledge and methodology to the treatment of the criminal or the prevention of crime to recognize that the real utility of such knowledge is dependent upon a critical appraisal of its limitations. Nor is it necessary to labor the point that a penal system can place basic values in jeopardy by assuming the existence of non-existent or institutionally-unavailable techniques.⁹³ That Garofolo was less than sensitive to these dangers can hardly be denied.

⁸⁸ See ANDENAES, *op. cit. supra* note 83.

⁸⁹ "For the stamping out of these non-criminal offenses, it will employ punishments of greater or less severity as necessity dictates, *keeping principally in mind their intimidatory effect*—their influence as an example and warning to would-be wrongdoers." (Italics added.) CRIM. at 217.

⁹⁰ See note 32, *supra*, and accompanying text.

⁹¹ CRIM. at 228.

⁹² *Id.* at 388. See also *Id.* at 66, 112.

⁹³ Cf. TAPPAN, *Sentences for Sex Criminals*, 42 J. CRIM. L. AND CRIMINOLOGY 332 (1951).

CONCLUSION

Although one of the conscious and explicit purposes of Garofolo's "Criminology" was to challenge certain basic assumptions of classical penal theory, a full consideration of his thought reveals much less than a complete rejection of the classical position. This is indicated by his close identification of the concepts of crime and the criminal with attendant emphasis on the act as an index of criminality, by his qualified recognition of the deterrent effect of penal sanctions, and by his attention to the necessity for some ordering of penalties. These correspondences may suggest that when emphasis is directed to the real and recurring problems of criminal administration, there are wider possibilities for attaining practical reconciliation of diverging theoretical viewpoints than is sometimes assumed.

Nevertheless, Garofolo's differences with the classical writers, such as his fellow-countryman, Beccaria, are frequent and important. Two of general significance should be noted. First, there is in Garofolo's work a recognition of the relevance of the scientific method which rarely receives a comparable emphasis in classical criminology. This is not to deny that Garofolo's thought is pervaded by certain untested, *a priori* assumptions and that many of his views so based have not survived the passing of the years. Yet his devotion to the ideal of empirical investigation provides a mechanism for the adjustment of hypothesis and theory to new knowledge as it is acquired.

Second, in contrast to the classical writers, there is in Garofolo's thought a persistent tendency toward the exaltation of social interests and a devaluation of individual rights. Both Beccaria and Garofolo, interestingly enough, accept the concept of necessity as the justification for criminal penalties.⁹⁴ But necessity means something quite different for each. Beccaria assumes the dominance of individual rights and accepts penal restraints only to the extent required for social coexistence, which, in turn, leads to a fuller realization of individual rights. But Garofolo reveals scant sympathy for any view which accords priority to interests other than those of the group. "Metaphorically speaking," he writes, "the individual represents but a cell of the social body."⁹⁵ Nowhere does this tendency appear more clearly than in his discussion of criminal procedures.⁹⁶ Recognizing that the procedures he discusses are founded on a very different tradition from our own and that criticism by one foreign to that experience is perilous, one cannot help but be struck by the fact that Garofolo's whole attention is directed to the more efficient apprehension and conviction of offenders. Mistake or the malevolent use of state power as possibilities demanding safeguards plays no part in his analysis. This faith in the beneficence of political authority no doubt reveals Garofolo as a child of his times.⁹⁷ But in a less

⁹⁴ Compare BECCARIA, *op. cit. supra* note 28 at 17-19 with CRIM. at 270-273, 299-308.

⁹⁵ CRIM. at 224. See also *Id.* at 302, 306-308, 368.

⁹⁶ *Id.* at 338 *et seq.*

⁹⁷ It is worth noting, however, that Garofolo took vigorous exception to the socialism of certain members of the Italian school, particularly Ferri. The latter, for example, wrote: "Sociology will be socialistic or it will not exist." FERRI, *op. cit. supra* note 8 at 17, fn. 2. A contemporary account is interesting in this connection: "His [Garofolo's] latest volume, entitled 'Socialist Superstitions' has excited much wrath and astonishment in socialistic and anthropological camps, and was severely

happy day we are not free to make the same easy assumption. Accordingly, the sense of political realities which pervades the thought of Beccaria and his school has a relevance for the present which it obviously lacked for Garofolo.

A full appreciation of Garofolo's contribution requires a more extensive consideration than can be given here of a number of specifically legal topics. His discussion of criminal attempt, for example, remains one of the classic treatments of that difficult subject.⁹⁸ His perceptive criticism of the idea of premeditation and his efforts to incorporate a more specific reference to motive in criminal legislation are notable and require attention in any modern effort to restate the penal law.⁹⁹

Admittedly, an appraisal of the continuing significance of Garofolo's "Criminology" must recognize that, despite the value of its insights, many of the assumptions and a great deal of the theoretical apparatus have lost much of their relevance for modern thought. But in addition to its very real contributions, the work retains its power to stimulate; for the issues it raises are real and persistent. Perhaps this is enough to require of any book.

combatted, especially by Ferri, who wrote a pamphlet on purpose to confute the publication. R. Garofolo [*sic*] was born in Naples, in 1852, of an old patrician family, hence perhaps by atavism he is debarred from being a socialist." ZIMMERN, *Criminal Anthropology in Italy*, 10 GREEN BAG 342, 382, 385 (1898).

⁹⁸ CRM. at 308-321.

⁹⁹ *Id.* at 373-382.