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Opinion Article

Role of criminal jurisprudence in its relation to criminal anthropology

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DESCRIPTION

Criminal anthropology is a branch of sociology, and its purpose is to scientifically investigate crime: to study its origin and causes, and to determine, if possible, what share of responsibility belongs to society and what to the criminal. Criminologists thus become those who study crime with reference to its origin, distribution, prevention and punishment. Such a system of justice can be called jurisprudence. Criminal jurisprudence arises where the sovereignty of society may be directly or indirectly affected by human action or inaction. Warning of offenses to the society for the protection of the society itself with the help of laws is part of the field of criminal jurisprudence.

While criminal anthropology follows its own method of inquiry and is quite distinct from jurisprudence, it is entirely dependent on the latter and can be of little practical use except through the channels of law and the courts. Law defines who should constitute the criminal class according to the theory of social protection, and criminal anthropology, accepting this definition, tries to determine the causes of crime and the methods most suitable for its suppression and prevention. From its object it is evident that if this science can be put on a solid foundation and rid of some of the nonsense which characterizes it, like all new sciences, its service to the administration of justice will be inestimable. In order to show the relationship in which both now stand, it will be necessary to sketch the origin and development of each of them.

Criminal law originates from the need to preserve peace and harmony as civilization develops and social life becomes more complicated. It is that branch of jurisprudence concerned with the definition and punishment of acts or omissions which constitute attacks on public order; abuse or obstruction of public authority; actions that harm the public as a whole; encroachments on the person and property of natural persons or related rights. In all the primitive relations of mankind, revenge was one of the ruling principles, and was carried out first by the individual, then by the clan or family, and finally by the community and the state. The offense was undefined or un-codified. The rule of procedure was simple: any injury done by one man to another, or one clan to another, could be redressed by similar wounds or war. Early punishments, if you can call them that, were death and mutilation, and the gradual substitution of a system of fines for less serious crimes. Private warfare and blood feuds were the rule, and organized revenge was the ruling principle of primitive justice.

Moral rights were not recognized, and force was the only method of offense or defense. With the development of social life it was found impractical and inexpedient for every individual or family aggrieved to pursue, seize, and avenge the wrongdoer, and the gradual delegation of authority to a leader or sovereign was substituted. Specific crimes were declared and certain elected representatives meted out, not justice in the modern sense, but revenge, which was the prevailing mood of the victim. Many of the crimes and punishments of primitive law exist today almost unchanged, but are applied with different knowledge and purposes.

The procedure corresponded to the idea of the crime and consisted mainly in private warfare only. From this it developed into the law of infangthef, which recognized the right of the injured party to destroy the offender, or to obtain compensation for the act. The method of prosecution was by indictment, either by a committee appointed for the purpose, or by a private accuser, and the taking of depositions was a common practice in these primitive courts. The idea of revenge as a constant factor in the early punishment of criminals is clearly revealed in the study of methods of trial and punishment.

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