

**THE MODERN CRIMINAL  
SCIENCE SERIES. MODERN  
THEORIES OF  
CRIMINALITY**

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The modern criminal science series. Modern theories of criminality by C. Bernaldo de Quir?s

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**C. BERNALDO DE QUIRÓS**

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Samuel Bank

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# Modern Theories of Criminality

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By C. BERNALDO DE QUIRÓS

Translated from the Spanish

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WITH AN INTRODUCTION BY Wm. W. SMITHERS, Esq.

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TO MY SONS  
JUAN AND CONSTANCIO  
IN MEMORY OF MY PARENTS

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## GENERAL INTRODUCTION TO THE MODERN CRIMINAL SCIENCE SERIES.

At the National Conference of Criminal Law and Criminology, held in Chicago, at Northwestern University, in June, 1909, the American Institute of Criminal Law and Criminology was organized; and, as a part of its work, the following resolution was passed:

"Whereas, it is exceedingly desirable that important treatises on criminology in foreign languages be made readily accessible in the English language, *Resolved*, that the president appoint a committee of five with power to select such treatises as in their judgment should be translated, and to arrange for their publication."

The Committee appointed under this Resolution has made careful investigation of the literature of the subject, and has consulted by frequent correspondence. It has selected several works from among the mass of material. It has arranged with publisher, with authors, and with translators, for the immediate undertaking and rapid progress of the task. It realizes the necessity of educating the professions and the public by the wide diffusion of information on this subject. It desires here to explain the considerations which have moved it in seeking to select the treatises best adapted to the purpose.

For the community at large, it is important to recognize that criminal science is a larger thing than criminal law. The legal profession in particular has a duty to familiarize itself with the principles of that science, as the sole means for intelligent and systematic improvement of the criminal law.

Two centuries ago, while modern medical science was still young, medical practitioners proceeded upon two general assumptions: one as to the cause of disease, the other as to its treatment. As to the cause of disease, — disease was sent by the inscrutable will of God. No man could fathom that will, nor its arbitrary operation. As to the treatment of disease, there were believed to be a few remedial agents of universal efficacy. Calomel and blood-letting, for example, were two of the principal ones. A larger or smaller dose of calomel, a greater or less quantity of bloodletting, — this blindly indiscriminate mode of treatment was regarded as orthodox for all common varieties of ailment. And so his calomel pill and his bloodletting lancet were carried everywhere with him by the doctor.

Nowadays, all this is past, in medical science. As to the causes of disease, we know that they are facts of nature, — various, but distinguishable by diagnosis and research, and more or less capable of prevention or control or counteraction. As to the treatment, we now know that there are various specific modes of treatment for specific causes or symptoms, and that the treatment must be adapted to the cause. In short, the individualization of disease, in cause and in treatment, is the dominant truth of modern medical science.

The same truth is now known about crime; but the understanding and the application of it are just opening upon us. The old and still dominant thought is, as to cause, that a crime is caused by the inscrutable moral free will of the human being, doing or not doing the crime, just as it pleases; absolutely free in advance, at any moment of time, to choose or not to choose the criminal act, and therefore in itself the sole and ultimate cause of crime. As to treatment, there still are just two traditional measures, used in varying doses for all kinds of crime and all kinds of persons, — jail, or a fine (for death is now employed in rare cases only). But modern science, here as in medicine, recognizes that crime

also (like disease) has natural causes. It need not be asserted for one moment that crime is a disease. But it does have natural causes, — that is, circumstances which work to produce it in a given case. And as to treatment, modern science recognizes that penal or remedial treatment cannot possibly be indiscriminate and machine-like, but must be adapted to the causes, and to the man as affected by those causes. Common sense and logic alike require, inevitably, that the moment we predicate a specific cause for an undesirable effect, the remedial treatment must be specifically adapted to that cause.

Thus the great truth of the present and the future, for criminal science, is the individualization of penal treatment, — for that man, and for the cause of that man's crime.

Now this truth opens up a vast field for re-examination. It means that we must study all the possible data that can be causes of crime, — the man's heredity, the man's physical and moral make-up, his emotional temperament, the surroundings of his youth, his present home, and other conditions, — all the influencing circumstances. And it means that the effect of different methods of treatment, old or new, for different kinds of men and of causes, must be studied, experimented, and compared. Only in this way can accurate knowledge be reached, and new efficient measures be adopted.

All this has been going on in Europe for forty years past, and in limited fields in this country. All the branches of science that can help have been working, — anthropology, medicine, psychology, economics, sociology, philanthropy, penology. The law alone has abstained. The science of law is the one to be served by all this. But the public in general and the legal profession in particular have remained either ignorant of the entire subject or indifferent to the entire scientific movement. And this ignorance or indifference has blocked the way to progress in administration.