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PIONEERS IN CRIMINOLOGY: ARNOULD BONNEVILLE DE MARSANGY (1802-1894)*

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Arnould Bonneville de Marsangy was an influential voice in the field of criminal legislative reforms in the France of the mid-nineteenth century. Jurist by profession, his innovative ideas on many criminological problems led the *Encyclopedia of the Social Sciences*¹ to include him as a reformer and a social scientist.

Born in Mons (Belgium), of French parents, in March 1802, Bonneville was a descendant of an ancient noble family. He studied law in Paris, and had a distinguished career as prosecutor, president judge at Versailles and imperial councilor at Paris.

Bonneville mainly directed his thinking and research to the institutions "complementary to" the penitentiary system. Bonneville elaborated his ideas especially in a work published in 1847 and entitled *An Essay on the Institutions Complementary to the Penitentiary System*, in which he discussed topics such as victim reparation by criminals, the pardoning power, parole, after-care services and rehabilitation. His influence is shown by the fact that this book was distributed by the French Government to the members of both Chambers as an official document. Bonneville's other major work, *Of the Amelioration of the Criminal Law*, published in two volumes, in 1855 and 1864, extended his ideas in the same framework.

He always tried to push a new reform under the cloak of a legislative and de facto past or present precedent in foreign legislations or, most often, in the French criminal law and institutions. His study of innovations was based, as he himself once indicated, on "comparative legislation and statistics", because in this way it is "difficult for serious authors to go astray, since the first shows them the

state of laws, and the second, the state of facts."² His books, as well as his articles in journals, have not the well-integrated logic and sophistication of treatises on penal law and institutions, but consist rather of small essays and monographs.

Bonneville's ideas, which seem particularly worthy of retaining our attention, because they are a part of the modern criminological picture, can be joined to three key-concepts: the parole system and the indeterminate sentence, victim compensation, and the penal registry plan to identify recidivists.

PAROLE AND INDETERMINATE SENTENCES

Bonneville delineated a parole system, which he called "preparatory liberation" or "conditional release", as early as 1846 when he delivered a discourse on the topic at the opening session of the Civil Tribunal at Reims. He defined parole as "a sort of middle term between an absolute pardon and the execution of the entire sentence; the right conceded to the administration by the judiciary to release provisionally under certain conditions, and after a sufficient period of expiatory suffering, a convict who appears to be reformed, reserving the right to return him to the prison if there is any well-founded complaint against him." Parole was seen as "a powerful incentive to self-reformation" and as a system which had the "advantage to test and to maintain, for a certain period of time and in the ordinary tempo of life, the good behavior of the discharged convicts; to facilitate, thus, their moral rehabilitation and their re-classification in society; finally, it would be a notable source of economy for the State."³

* The author wishes to thank Dr. Thorsten Sellin who was responsible for his primary contact with the works of Bonneville. He also thanks Prof. Marc Ancel.

¹ 2 ENCYCLOPEDIA OF THE SOCIAL SCIENCES 637-38. The article on Bonneville is signed by Thorsten Sellin.

² A. BONNEVILLE DE MARSANGY, DE L'AMÉLIORATION DE LA LOI CRIMINELLE, vol. 2, p. xvii (Paris, 1864).

³ A. BONNEVILLE DE MARSANGY, TRAITÉ DES DIVERSES INSTITUTIONS COMPLÉMENTAIRES DU RÉGIME PÉNITENTIAIRE 202-03 (Paris, 1847).

Bonneville's parole system was in fact divided into two stages, a "quasi-release" and the "conditional release" per se. In the first phase, industrial or agricultural work would take place. Either the prisoners would reside in a State industrial complex or a State farm, or they would work for private individuals. Convicts working on the open market during the day would, obviously, sleep in prison at night. Bonneville's intention was to prepare convicts for the competition of free labour and to facilitate their re-classification. In the second phase, parole would involve, as our own contemporary system, a supervision by parole officers providing guidance, aid and control of the offenders.

Bonneville was very preoccupied at the same time with the problem of recidivism, so that, having devised a system of parole, he immediately devised a means, inversely symmetrical, in order to fight recidivism. This means was the infliction of a "supplementary detention"⁴ to convicts who were not reformed when their sentences ended. If we think of Bonneville's parole system in connection with his supplementary detention, in a framework of a minimum of time served before being released and a maximum of "time-to-serve-in-addition-to" (which minimum and maximum he discussed in his work), and in the perspective of a large gap in-between left to the discretion of administrative authorities, we have here one of the first formulations of the principle of the indeterminate sentence, more clearly stated than prior discussions of it by Paley, Whately and others at the turn of the nineteenth century.⁵

A historical note is interesting at this point. On the one hand, Maconochie and Crofton are usually claimed in America and England as the originators of the parole system.⁶ On the other hand, Europeans often recognize Bonneville as the father of parole. De Quiros mentions that Frenchmen claim Bonneville as the inventor of parole.⁷ Vidal, in his *French Course of Criminal Law and Penitentiary System*, strongly maintains this point of view.⁸

⁴ *Id.* at 242-47.

⁵ See Lindsey, *Historical Sketch of the Indeterminate Sentence and Parole*, 16 J. CRIM. L. & CRIMINOLOGY 9-126 (1925-26); T. Sellin, *Paley on the Time Sentence*, 22 J. CRIM. L. & CRIMINOLOGY 264-66 (1931-32).

⁶ Barry, *Alexander Maconochie*, in Mannheim, *PIONEERS IN CRIMINOLOGY* 68-90 (1960), espec. pp. 86-88; and GRUNHUT, *PENAL REFORM* 84 (1948).

⁷ DE QUIROS, *LAS NUEVAS TEORIAS DE LA CRIMINALIDAD* 167 (La Havane, Montero ed., 1946).

⁸ VIDAL, *COURS DE DROIT CRIMINEL ET DE SCIENCE PÉNITENTIAIRE* 686 (Paris, 2nd ed. 1910).

European legislation on parole seems to have been influenced primarily by Bonneville. Thus, the general rapporteur of the project of the Portuguese Penal Code, which instituted Parole, wrote a letter to Bonneville, dated July 4, 1859, in which he recognized that "the Commission has introduced in its penal reform all the ameliorations that your works have indicated. It so confesses to you. It sees in this a tribute by Portugal to your efforts."⁹

Historical innovations are often created independently and almost simultaneously. This seems to be the case about the origins of parole, especially in view of factors of time and means of communication. In effect, Maconochie developed his scheme in the years 1840-1844 as governor of Norfolk Island, a famous penal colony east of Australia, whereas Bonneville's ideas came out in the years 1846-1847. Our knowledge of the slowness of communications at the time, especially in such a sector of activity, leaves us with the impression that Bonneville really did not know about Maconochie's proposal. As to Crofton's Irish system, established around 1854-1862, it seems that it was based on refinements of the Maconochie's system alone, although Bonneville's propositions about parole were quite extensively known throughout Europe by the time.

At any rate, some countries, like Portugal, have been influenced by Bonneville's ideas, and others, like Great Britain, probably derived their system from the Australian experience. In America, it is interesting to recall that the celebrated *First National Prison Congress* at Cincinnati in 1870 (precursor of the *International Penal and Penitentiary Prison Congress* held for the first time in London in 1872) paid its regards to Bonneville, Crofton and Maconochie for their contributions to the parole system, and that Dr. Wines, the initiator of both Congresses and an ardent promoter of parole in the United States, had himself translated in 1867 the first address of Bonneville on the topic.¹⁰ Dr. Wines was also one of the leaders responsible for the creation of the New York reformatory at Elmira, opened in 1876, and having built into its program the first parole system in the United States on indeterminate sentences.

VICTIM COMPENSATION

Reparation or restitution by an individual offender to the person he victimized is an old idea

⁹ *Op. cit. supra* note 2, at vii.

¹⁰ *Preparatory Liberation, REPORT OF THE PRISON ASSOCIATION OF NEW YORK* 165-78 (1867).

which, viewed as a civil matter exclusively, as it had been (and still is) conceptualized, was almost merely an empty principle resulting in the disappearance of reparation in the daily judicial practice. The propositions of Bonneville in this matter, directly responsible to the radical thinking of the Italian Positivist School, consisted in favorizing a limited mingling of criminal and civil procedures in cases of reparation in order to satisfy efficiently personal injury. Bonneville stressed the element of public responsibility. He thus, proposed, for example, that the amount of restitution by the offender to the victim should be decided "ex officio" in the criminal court and that the obligation to repay the victim as prescribed should be a "criminal obligation" just as it is when restitution is due to the State.

The importance attached by Bonneville to the destiny of the victims and public responsibility towards them led him, moreover, to advance the idea of a "State Victim-Compensation" plan. Bonneville, thus, wrote that reparation was in principle:

"One of the indispensable elements of *public security*. Now, if it is true that there is no real social security without reparation, the conclusion is that this reparation must take place, cost what it will, and as one of the sine qua non conditions of the social contract; and that, in consequence, society must rigorously impose it on the culprit, at the same time and under the same justification that it imposes punishment on him; however, by the same token, we must conclude that if there is no known culprit, *society itself must assume the responsibility for reparation*. . . . It would be easy to show, with arguments of an irresistible logic, that, when the authors of a crime are unknown or when the condemned persons are insolvent, the State should repair the harm done to the victim."¹¹

We must admit that recent victim-compensation plans by the State,¹² at least in crimes of personal violence, as in New Zealand (1963), in Great Britain (1964) and in California (1965), in their

general formulations come pretty close to Bonneville's approach, more than one hundred years after. . . .

Sutherland recognizes rightly Bonneville's historical achievement in the field of victim reparation and compensation.¹³

PENAL REGISTRY PLAN

The name of Bonneville is overtly recognized as the father of the penal registry plan commonly called "casiers judiciaires." The *Twelfth International Penal and Penitentiary Congress*, held at The Hague in 1950, devoted a full session on the topic while paying its due regards to an institution which had originated in France a century before, in 1850, two years after Bonneville had imagined it.

The problem underlying the proposal was the following: since the beginning of the nineteenth century, recidivism defined by law was a cause for increasing the maximum of the punishment and an important factor in determining the type, the duration and the character of punishment and security measures. In order to form a considered opinion about the accused, it was necessary to know if he had been previously convicted. Bonneville's idea was, thus, to develop a reliable and complete record of all previous convictions of an offender. Bonneville's simple but practical solution¹⁴ suggested the assembling of all the reports of sentences imposed on a given individual by having such reports sent to the clerk of court in the district of his birthplace. The proposed system would create at each district tribunal a "mobile card-index cabinet" where, henceforth, certificates of final sentences pronounced anytime and anywhere against people born in that district would be centralized and classified there in alphabetical order by the names of the convicted persons. Such a penal register could easily and promptly answer an inquiry by the prosecuting authorities.

Established in France, in 1850, the system was widely copied later in most European countries and exchanges of information between countries began. It is still commonly used today in Europe, although the system was never tried in Anglo-Saxon countries, where, especially in the United States, a preference for a fingerprint system,

¹³ Sutherland, *PRINCIPLES OF CRIMINOLOGY* 576 (4th ed. 1947).

¹⁴ A. BONNEVILLE DE MARSANGY, *DE LA LOCALISATION AU GREFFE DE L'ARRONDISSEMENT NATAL DES RENSEIGNEMENTS JUDICIAIRES CONCERNANT CHAQUE CONDAMNÉ* (Versailles, Nov. 5th., 1848).

¹¹ *Op. cit. supra* note 3, at 6.

¹² See Childres, *Compensation for Criminally Inflicted Personal Injury*, 39 N.Y.U.L. REV. 444 (1964); Culhare, *California Enacts Legislation to Aid Victims of Criminal Violence*, 18 STAN. L. REV. 266; (1965) and Wolfgang, *Victim Compensation in Crimes of Personal Violence*, 50 MINN. L. REV. 223 (1965).

centralized in the Federal Bureau of Investigation, has been shown.

Bonneville's ideas on this matter may, however, have been at the origin of some modern American works in criminology, such as the Gluecks' prediction study. Marc Ancel, for one, thinks so. He writes:

"Perhaps, it should be recalled that Bonneville de Marsangy was not just the inventor of the criminal record (*casier judiciaire*). Very well informed and much in advance of his time, he sought to draw up a systematic record of the previous convictions of accused persons simply because he was interested in the general problem of crime and the repetition of offences. He was perhaps the first to show clearly that an individual's present behavior, correctly interpreted, may be the pointer to his future conduct. In this respect, Bonneville de Marsangy can be claimed as a precursor of doctrines such as those of the preventive treatment of crime and those underlying the concept of preventive measures (*mesures de sûreté*). He could even be claimed as the ancestor of the ideas which inspire contemporary research into the foreseeability of conduct, exemplified by the prediction tables that are advocated in particular by S. and E. Glueck."¹⁵

BONNEVILLE AND MODERN CRIMINOLOGY

As Jeffery put it, "if we understand the pioneers, then we can better understand the current issues in criminology. . . . Twentieth-century criminology is a product of the theories of the eighteenth and nineteenth centuries."¹⁶

The name of Bonneville may be linked with the modern principle of the "individualization of punishment". His advanced ideas may better be understood if we recall that he was living in the middle of the nineteenth century when the impact of the classical school and beccarian ideas about the fitting of the punishment to the "crime" was still at a high peak, having been consecrated by the French Codes of 1791 and 1808. That punishment should be fitted to the "criminal" and not to the "crime" and that the criminal should not be punished essentially for what he has done but for what he is, were ideas at the source of Bonneville's

thinking in criminological matters. It is evidenced by his proposals of parole, indeterminate sentences and victim reparation and compensation.

Thus, it is not surprising to see Ferri linking the name and the works of Bonneville with the two main and fundamental criteria of the *System of Social Defense* elaborated at the turn of this century by the *Italian Positive School* of Lombroso, Ferri and Garofalo, *i.e.* "segregation for an indeterminate period"¹⁷ (parole and indeterminate sentences) and "reparation in damages"¹⁸ (victim compensation). Ferri writes: "I see that as early as 1847 Bonneville de Marsangy, with admirable common sense, stating that the private damage caused by crime was almost never paid, made . . . remarkable proposals."¹⁹

In addition to this recognition of Bonneville as a precursor by the *Positivistic System of Social Defense*, what has been called the *New Social Defense* or what Mannheim calls "The Third School"²⁰ of the mid-twentieth century, exemplified by Judge Marc Ancel, also claims Bonneville as one of the forerunners of this "new" movement, together with John Howard and Elizabeth Fry in England, Charles Lucas in France and Ducpétiaux in Belgium.²¹

The *Italian* as well as the *New* schools of Social Defense both stress the need to understand the crime as a social and individual phenomenon, the need to prevent its commission or repetition and the need for asking oneself what attitude is to be adopted towards the criminal, *over and beyond the legal qualification of the offense*. Ferri, however, went so far as to maintain that, criminal law as such having allegedly failed, the field should be left open to medical and social action of a preventive nature in which the lawyers would have no place. As Ancel puts it: "The imperialistic monopoly of the criminal law was thus to be succeeded by a criminological imperialism, ill defined and probably all the more dangerous, preoccupied solely with practical efficacy."²² The *New Social Defense*, on the contrary, took a moderate position, viewing the process of resocialization as one which can take place only by way of an ever-increasing humanization of the "new" criminal law. In its confronta-

¹⁷ FERRI, *CRIMINAL SOCIOLOGY* 502-09, espec. p. 505 (1917).

¹⁸ *Id.* at 509-15.

¹⁹ *Id.* at 512.

²⁰ Mannheim, *Introduction* in H. Mannheim, *op. cit.* *supra* note 6, at 35.

²¹ Ancel, *op. cit.* *supra* note 15, at 39.

²² *Id.* at 106-07.

¹⁵ ANCEL, *SOCIAL DEFENCE* 39-40 (1965).

¹⁶ Jeffery, *The historical development in criminology*, in H. MANNHEIM, *op. cit.* *supra* note 6, at 364.

tion with the large and new field of social sciences, the *New* school has sought to preserve the "balance" between criminal law and criminology.

There is not the slightest doubt in our mind that, if Bonneville de Marsangy was living today and could see the development of the behavioral sciences as we know it, he would react favorably toward the moderate view which tries to make the best use of criminal law and criminology, without according superiority to the one or the other.

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