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## **Scipio Sighele and the responsibility of the criminal crowd**

**ABSTRACT:** At the end of the 19<sup>th</sup> century, a new field of research was on the horizon; namely, collective psychology. This new branch of knowledge, in part, had its origins from studies of the so called “crimes of the crowd” as conducted by the Italian scholar Scipio Sighele. Up until then, no one had investigated the extent of this phenomenon. The application of scientific knowledge to the study of criminal law, typical of penal positivism of the late 19<sup>th</sup> century, made the opening to these new horizons possible. As to the crimes of the crowd, it didn't take a particularly long time for these ideas to pass from the pages of its authors (including Sighele) to the courtrooms, and from the latter, to the penal codes.

**KEYWORDS:** Criminal crowd, Collective psychology, Positive school of penal law, Scipio Sighele, Penal responsibility.

**INDEX:** 1. The origins of the criminal crowd. 2. Scipio Sighele and the criminal crowd. 3. Crowd and hypnotism. 4. The Lombrosian influences on the Sighele's theories.

### 1. *The Origins of the criminal crowd*

In the Italian penal code as expressed in Article 62 paragraph 3, there are extenuating circumstances to be considered for a person, «having acted at the suggestion of a crowd in turmoil, except in cases of meetings or assemblies forbidden by law or by the authorities, when the offender is not a habitual or professional delinquent or contravener, or a delinquent by tendency». This rule, introduced by the Rocco Code in 1930, did not have any precedent in the Italian criminal justice system. It was indeed the first code in the Italian Peninsula which allowed a judge, on certain conditions, to diminish the punishment for a criminal offence in the case it was committed within a crowd in turmoil.

The aim of this article is to take us back into the origins of this regulatory choice, by identifying the scientific trends within which it occurred in the penal positivism of the day, at the end of nineteenth century.

As it is quite common in the legal world, the facts or substance of the matter usually occur before any theoretical reflections or legislative choices. In Italy, in fact, the first manifestation of a different appreciation for crimes committed by a crowd in turmoil happened in the judicial field<sup>1</sup>.

Between 1886 and 1887, the first Italian court that had to deal with this issue was the Court of Bari which had to judge upon an event of collective violence in Gravina di Puglia<sup>2</sup>. In May 1886 the mayor of the town passed a decree whereby a popular celebration was forbidden on the grounds of public safety. Part of the population reacted to this prohibition and attacked the officers who had attempted to enforce the order of the mayor.

Giuseppe Alberto Pugliese, the lawyer of one of the aggressor, formulated his defence in a most unusual way for that time. He sustained that in the excitement of a crowd in turmoil, a participating person who committed an offence in that context could lose part of his capacity of discernment and for this reason, the offender had to receive a more lenient sentence. Pugliese came

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<sup>1</sup> Some of the trials held in Italy, at the end of Nineteenth century, on criminal crowd are collected in appendix of S. Sighele, *I delitti della folla, studiati secondo la Psicologia, il Diritto e la Giurisprudenza*, Torino 1923.

<sup>2</sup> On this trial and on Giuseppe Alberto Pugliese see A. De Benedictis, A., *Il giudice, gli avvocati e la folla. Il tumulto popolare per la festa di S. Michele a Gravina (1886) nella sentenza del tribunale di Bari (1887)*, in «Acta Histriae», XVI (2008), pp. 561-576.

to this conclusion by applying some observations regarding hypnotism which had already been formulated in the medical-psychological field and which he personally had already tried to broach in its juridical consequences<sup>3</sup>. Thus, by expanding his conclusions on hypnosis from a single man or woman to one or any number of individuals acting within a tumultuous crowd, Pugliese became convinced that some of these individuals in a crowd behaved as if hypnotized, that is, being under the power of a potent suggestion that pushed him/ her to the commission of acts out of his/ her control.

The Court of Bari accepted Pugliese's innovative thesis and ruled in favour of a mitigated responsibility of the defendants, condemning them to a lighter punishment. In publishing his defensive closing statement, Pugliese hoped that some researchers would investigate this issue more deeply<sup>4</sup>. However, his wishes went unheeded.

Few years later, in 1891, the Court of Bologna approached a similar case. The event became famous because it involved Giosuè Carducci, a very famous Italian man of letters. For some particular political reasons, a number of students staged a strong protest against him during one of his lectures at the University of Bologna. On the arrival of the police the students had resisted the order to disband.

Among the students' lawyers there was Enrico Ferri, a rising star of the Italian penal positivism<sup>5</sup>. During the trial he proposed the same reasoning as was made some years earlier by Pugliese<sup>6</sup>. In this case, the court also accepted the thesis of the diminished responsibility of a person who committed a crime spurred on by crowd in turmoil. The acquittal of almost all the defendants (only one of them was condemned to a very slight punishment) was based on the argument that: «In the case of crimes committed in popular riots, when the defendants do not act by themselves, nor for personal reasons, but in a crowd of individuals pushed by the same passions, the action must be considered from a special point of view, because responsibility can be greatly attenuated and in some cases even nullified».

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<sup>3</sup> G.A. Pugliese, *Nuovi problemi di responsabilità penale*, in «Archivio di psichiatria», VI (1885), pp. 109-112.

<sup>4</sup> G.A. Pugliese, *Del delitto collettivo*, in «Rivista di giurisprudenza», 2, XII (1887), pp. 215-226.

<sup>5</sup> On Enrico Ferri see F. Colao, *Ferri, Enrico*, in *Dizionario Biografico dei Giuristi Italiani (XII-XX secolo)*, I, Bologna 2013, pp. 849-852.

<sup>6</sup> E. Ferri, *La psicologia nel processo agli studenti bolognesi*, in «La Scuola positiva», 1, I (1891), pp. 19-25.

## 2. *Scipio Sighele and the criminal crowd*

Ferri's defence had probably relied on the studies on the collective crime conducted by one of his pupil at the University of Bologna, Scipio Sighele<sup>7</sup>; in fact, during the same year of the Bologna decision, Sighele had published some articles on the same topic in the «Archivio di psichiatria» (the prestigious journal directed by Cesare Lombroso)<sup>8</sup> as well as a monograph entitled *La folla delinquente*<sup>9</sup>.

At that time, his works appeared as having strong traits of originality, with the exception of Pugliese's argument and a pamphlet of about twenty pages, edited in Trani in 1887, by the lawyer Cesare Ricco, who was a contributor of the review «Rivista di giurisprudenza» during his university studies, as a pupil of Enrico Pessina in Naples<sup>10</sup>.

Surprisingly, at that time, no one mentioned Ricco's work, despite the fact that the title, *La folla delinquente*, was the same used by Sighele four years after, publishing the first book of his career.

Sighele's writings can be considered the foundational works of this new subject, being the collective psychology or psychology of the crowd, which had a surprising spread between the Nineteenth and the Twentieth century, even if the interest for these kinds of studies did not last long<sup>11</sup>.

<sup>7</sup> On Scipio Sighele see M. Stronati, *Sighele, Scipio*, in *Dizionario Biografico dei Giuristi Italiani*, cit., II, pp. 1862-1863.

<sup>8</sup> S. Sighele, S., *La folla delinquente*, in «Archivio di psichiatria», XII (1891), pp. 10-53 e 222-267. On the journal «Archivio di psichiatria» see P. Marchetti, *Cesare Lombroso e l'Archivio di psichiatria*, in L. Lacché, M. Stronati (ed.), *La 'cultura' delle Riviste nel dibattito penalistico tra Otto e Novecento*, Macerata 2012, pp. 69-96

<sup>9</sup> S. Sighele, *La folla delinquente*, Torino 1891.

<sup>10</sup> C. Ricco, *La folla delinquente*, Trani 1887. On Cesare Ricco and his pamphlet see A. De Benedictis, *Il giudice, gli avvocati e la folla*, cit., pp. 569-571.

<sup>11</sup> About the crowd psychology and its development see M. Nacci, *Il volto della folla. Soggetti collettivi, democrazia, individuo*, Bologna 2019. See also E. Baietti, *Criminal crowds: Responsibility attribution and social control in Sighele and Le Bon. Pioneering studies on crowd violence between criminal anthropology and collective psychology*, in «Rivista di Psicopatologia Forense, Medicina Legale, Criminologia», 3, XXIII (2018), pp. 160-165; D. Palano, *Il potere della moltitudine. L'invenzione dell'inconscio collettivo nella teoria politica e nelle scienze sociali italiane tra Otto e Novecento*, Milano 2002; J. Van Ginneken, *Crowds, Psychology and Politics. 1871-1899*, Cambridge 1989; A. Mucchi Faina, *L'abbraccio della folla. Cento anni di psicologia collettiva*, Bologna 1983; S. Barrows, *Distorting Mirrors. Visions of the Crowd in Late Nineteenth Century France*, New Haven-London 1981; R.A. Nye, *The Origins of Crowd Psychology. Gustave Le Bon and the Crisis of Mass Democracy in the Third Republic*, London 1975.

For some times there was a debate over the real fatherhood of this new discipline. This lively dispute involved at least three authors that claimed the paternity of the discipline: Scipio Sighele, Gabriel Tarde and Gustave Le Bon<sup>12</sup>.

Without taking much time to investigate the particulars of this dispute, it needs to be said that Gabriel Tarde's speech on the crimes of the crowd pronounced at the third Congress of Criminal Anthropology held in Brussels in 1892<sup>13</sup> and Gustave Le Bon's book on *Psychologie des foules*, published in 1895<sup>14</sup> were made three years after the translation in French language of Sighele's book, published in Paris exactly in 1892<sup>15</sup>.

In reality, there is a fourth author who intervened in this debate, the French doctor Henry Fournial, pupil of Alexandre Lacassagne. In 1892, Fournial published a book with the title *Essai sur la Psychologie des foules. Considérations médico-judiciaires sur les responsabilités collectives*. However, the fact that he later dedicate himself to a military career made him "a one book man," and so he was left out of the debate<sup>16</sup>.

Of course, Sighele in the first edition of his book dealt with crowd behaviour only from a penal point of view. On the contrary, Le Bon's work covered the phenomenon of crowd psychology far beyond its criminological aspects. In any case, Le Bon's book was the most popular work on this subject in the years that followed. Sigmund Freud himself used it largely in his *Massenpsychologie und Ich-Analyse*<sup>17</sup>.

However, the aim of this paper is not to speak about collective psychology, but rather, referring back to Sighele's work, it wants to investigate on crimes of the crowd. Regarding *La folla delinquent*, it should be stated that this book had four editions and several translations<sup>18</sup>. The young Italian scholar,

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<sup>12</sup> On this dispute see P. Marchetti, *L'inconscio in tribunale. Azioni incoscienti e diritto penale da Charcot alle neuroscienze*, Milano 2014, pp. 159 ss.

<sup>13</sup> G. Tarde, *Les crimes des foules*, in *Actes du Troisième Congrès international d'anthropologie criminelle tenu a Bruxelles en août 1892*, Bruxelles, 1893, pp. 73-90.

<sup>14</sup> G. Le Bon, G., *Psychologie des foules*, Paris 1895 (It. trans. *Psicologia delle folle*, Milano 2004).

<sup>15</sup> S. Sighele, *La foule criminelle. Essai de psychologie collective*, Paris 1892.

<sup>16</sup> H. Fournial, *Essai sur la psychologie des foules. Considérations médico-judiciaires sur les responsabilités collectives*, Paris-Lyon 1892.

<sup>17</sup> S. Freud, *Massenpsychologie und Ich-Analyse*, Leipzig-Wien-Zürich 1921 (It. trans. *Psicologia delle masse ed analisi dell'io*, in Id., *Opere*, IX, *L'io l'Es e altri scritti, (1886-1895)*, Torino 1989, pp. 261-331).

<sup>18</sup> This book by Sighele had four editions in Italian language: 1891, 1895, 1902, 1910. From the third edition it changed its title to *I delitti della folla, studiati secondo la Psicologia, il Diritto e la Giurisprudenza*. The book had also several translations in different languages. The two French editions of 1892 and 1901 became very important. On Scipio Sighele and the

progressively enriched his work with a number new observations. In particular, he recognized the less marginal role to the leaders in crowd behaviour<sup>19</sup>. In spite of this, the core of the Sighele's reflections, in the years to come, remained the same.

### 3. *Crowd and hypnotism*

From his point of view, Sighele's key reading to explain crowd behaviour was hypnotic suggestion. He sustained that persons in groups seemed to move as an actual hypnotized subject. In this case Sighele, did not refer to the hypnotic trance induced by a mesmerizer, but rather he relates to the larger phenomenon of suggestions under a waking state, as investigated by Hyppolite Bernheim, professor of medicine in Nancy<sup>20</sup>, and also as studied in Italy by Enrico Morselli<sup>21</sup>.

As to the behavioural transmission from one person to another, Sighele referred to the reflections of Gabriel Tarde recognizing in the law of imitation, one of the constitutive tendencies of human nature<sup>22</sup>. But to him, this simple reference did not appear sufficient to explain a crowd's behaviour. In this regard, Sighele believed that it was also indispensable to refer to Sergi's works; in particular, to his notion of epidemic psychosis which provides for the epidemic capacity of some ideas and emotions, to spread out in certain circumstances<sup>23</sup>.

The contribution given by the ideas of Giuseppe Sergi to Sighele's work was not limited to this specific point. Having resolved the issue of the uniformity of crowd behaviour, it remained to be explained the reason for the frequency of these violent acts committed by groups. Also in this case Sighele used some reflections developed by the roman anthropologist and psychologist, in particular his theory of the stratification of character<sup>24</sup>.

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various editions of *La folla delinquente* see O. Bosc, *La foule criminelle. Politique et criminalité dans l'Europe du tournant du XIXe siècle*, Paris 2007, pp. 103 ss.

<sup>19</sup> On this point see D. Palano, *Il potere della moltitudine*, cit., p. 450 and C. Gallini C., *La sonnambula meravigliosa. Magnetismo e ipnotismo nell'Ottocento italiano*, Milano 1983, p. 306.

<sup>20</sup> In particular see H. Bernheim, *De la suggestion dans l'état hypnotique et dans l'état de veille*, Paris 1884.

<sup>21</sup> E. Morselli, *Il magnetismo animale, la fascinazione e gli stati ipnotici*, Torino 1886.

<sup>22</sup> G. Tarde, *Les lois de l'imitation*, Paris 1890.

<sup>23</sup> G. Sergi, *Psicosi epidemica*, in «Rivista di filosofia scientifica», VIII (1889), pp. 151-172.

<sup>24</sup> G. Sergi, *La stratificazione del carattere e la delinquenza*, «Rivista di filosofia scientifica», II (1883), pp. 537-549.

According to Sergi, a person's character is composed of several layers. The deepest, but even the strongest, because it has been formed from time immemorial, is that of the natural or savage man, with all of his instincts and his aggressive impulses. With the advance of civilization, as the argument goes, other temperamental layers have been added until we get to the contemporary civilized level, which is more fragile than the rest because it has been just recently acquired. This last feature then represented the behaviour of the Western man at the end of nineteenth century. But in critical situations this equilibrium or stratification could fracture. The deeper temperamental layers could regain the upper hand, obscuring, for a longer or shorter period, the more superficial and rational layers directing human behaviour. Thus from this point of view, according to Sighele, the crowd condition was in reality a situation where the function of directing rational behaviour, typical of the conscious Ego, was excluded, because it was overtaken by a condition of general excitement that opened the door to the primitive, ancestral layers of the human character, dominated by forces out of his will or control.

So, a human being in a crowd could be driven to criminal acts that he would have never committed individually.

The idea that unconscious forces could drive crowd behaviour was, at that time, very interesting. This was in line with the research (beginning with the study of the split personality phenomenon and hypnotism) that modified the scientific point of view about the anthropological structure of the human being. Given this new perspective, individuals were seen as being pushed into action (not only in the pathological condition, but also in the case of absolute normality) by inner forces, often in conflict between themselves without consciousness<sup>25</sup>.

The vision of the human being resulting, from these studies, was the one of a "fragmented man" (as asserted Théodule Ribot<sup>26</sup>), very often directed by behavioural automatism out of the control of his consciousness (as said by Pierre Janet<sup>27</sup>).

#### 4. *The Lombrosian influences on the Sighele's theories*

In order to explain the reason why crowds do not always committed crimes, Sighele used the categories of Lombrosian anthropology. According

<sup>25</sup> On this point see D. Palano, *Il potere della moltitudine*, cit., p. 298

<sup>26</sup> Th. Ribot, *Les maladies de la personnalité*, Paris 1885.

<sup>27</sup> P. Janet, *L'automatisme psychologique. Essai de psychologie expérimentale sur les formes inférieures de l'activité humaine*, Paris 1889 (It. trans. *L'automatismo psicologico. Saggio sperimentale sulle forme inferiori dell'attività umana*, Milano 2013).

to these, human groups depended, to some extent, on the characteristics of their components. A crowd composed mostly of born criminals would have been more disposed to crime rather than a crowd mainly made up of honest persons. Nevertheless, in the end, Sighele inclined more towards an essentially negative vision of crowd behaviour.

Sighele's conclusions, even if related to some observations developed before him, were quite original. In particular, the young scholar did not conform to the idea, circulating at that time, of the suggestive capacity of the leader of a crowd. The semi-hypnotic condition that characterized the behaviour of a person in a crowd did not have its origin from an external individual source. On the contrary, it had a horizontal nature. Persons in a crowd, in other words, formed a kind of collective unconscious soul able to direct the actions of the group; and so this conclusion consolidated Sighele's opinion about the impossibility of considering the psychological features of a group as the result of the psychological features of persons who made it up.

After these rather innovative observations, Sighele dealt with the issue of the criminal responsibility of persons who committed crimes in crowd condition. In this case, Enrico Ferri's young pupil paid an evident tribute to Cesare Lombroso, the recognised master of the Italian criminal anthropology<sup>28</sup>. In any case, this reference to Lombroso's ideas was the weaker and less original part of Sighele's theories.

The first step that Sighele took to estimate penal responsibility of a man who committed a crime within a crowd in turmoil was, once again, referred to the hypnosis<sup>29</sup>. But this time Sighele, easily, gave up his references to the general phenomenon of suggestion, shifting the focus of his attention to the actual nature of "magnetic sleep", as explained by Jean Martin Charcot<sup>30</sup>.

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<sup>28</sup> On Lombroso and his theories see, among others, E. Musumeci, *Cesare Lombroso e le neuroscienze: un parricidio mancato. Devianza libero arbitrio, imputabilità tra antiche chimere ed inediti scenari*, Milano 2012; S. Montaldo, P. Tappero (ed.), *Cesare Lombroso cento anni dopo*, Torino, 2009; D. Frigessi, *Cesare Lombroso*, Torino 2003; M. Gibson, *Born to crime. Cesare Lombroso and the Origins of Biological Criminology*, Westport (Conn.), 2002 (It. trans. *Nati per il crimine. Cesare Lombroso e le origini della criminologia biologica*, Milano 2004).

<sup>29</sup> About the often unscrupulous use that the lawyers made of the notions of hypnosis and suggestion see E. Apfelbaum. *La psychologie des foules et les théories de la suggestion*, in M. Donzelli M. (ed.), *Folla e politica. Cultura filosofica, ideologia, scienze sociali in Italia e Francia a fine Ottocento*, Napoli 1995, pp. 171-181.

<sup>30</sup> In particular J.M. Charcot., *Physiologie pathologique: Sur les divers états nerveux déterminés par l'hypnotisation chez les hystériques*, in *Comptes-rendus hebdomadaire des séances de l'Académie des Sciences*, XCIV, Paris 1882, pp. 403-405. Regarding the different points of view of Bernheim and Charcot (and their schools) on hypnosis see P. Marchetti, *L'Inconscio in tribunale*, cit., pp. 39 ss.



According to Sighele, the mesmerized did not automatically respond to the command of his hypnotizer. Sighele recalled that many people, during several experimental tests, demonstrated a certain stamina to an order given under hypnosis and this stamina depended, in some way, on «organic predisposition» which characterized the moral condition of a person. In this sense, the crime committed by a subject in the rush of a crowd always had (even if in part) its origin in the physiological and psychological constitution of his author.

This observation could have brought one to the conclusion that a man who had committed a crime under the influence of a crowd was, at least, partially responsible for his action. But unfortunately, according to Sighele, entirely honest people represented an absolute minority just as the born criminals. All the others placed themselves in an intermediate zone situated between those two polarities. Ordinary people had a weak self-control because, as Sighele said, only the more superficial (and therefore more fragile) layers of human character had profited from the healthy effects of civilized society.

But the wild and cruel side of a human being was always in ambush, ready to surface in critical situations. In this context, the condition of crowd behaviour represented a kind of potent temporal accelerator able to change an honest person in a criminal man in few seconds.

This preliminary observation seemed to bring Sighele closer to a dynamic vision of the human psyche, and this led him to different conclusions about penal responsibility. But in deference to the Lombrosian criminal anthropology, Sighele did not investigate deeper into this subject. The young scholar affirmed that the sole criterion for estimating the responsibility of a criminal man had to be his dangerousness.

For these reasons punishment had not to be imposed on the objective seriousness of the offence, rather than on the subjective nature of the offender. Honest individuals, occasional or born criminals, had to be treated with different repressive measures, beyond the crime committed. The solution of the partial defect of mind, proposed by Pugliese, did not persuade Sighele, who considered this compromise acceptable only on the basis of existing legislation.

About ten years after the publishing of *La folla delinquente*, a jurist close to the positions of the *Scuola Positiva*, Ferdinando Puglia<sup>31</sup>, brought to light this limit of Sighele's reflection<sup>32</sup>. According to Puglia one of the weak points of

<sup>31</sup> On Ferdinando Puglia see V. Tolasi, *Puglia Ferdinando*, in *Dizionario Biografico dei Giuristi Italiani*, cit., II, p. 1633.

<sup>32</sup> F. Puglia, *Criminalità collettiva*, in «Archivio di psichiatria», XXII (1901), pp. 229-245 e 585-597.

Sighele's theory was in reality in his attempt to link the degree of responsibility of an offender, acting within a tumultuous crowd, to his criminal-anthropologic typology. On the contrary, the emotional state produced by a crowd in turmoil could be considered as an extenuating circumstance of the crime. At most, the theories of the Positivist School could be used to exclude the most dangerous criminals from this benefit, being the solution as was adopted by the Rocco code<sup>33</sup>.

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<sup>33</sup> F. Colao, *I delitti della folla dall'ideario positivista al codice Rocco*, in *Studi in onore di Remo Martini*, I, Milano 2008, pp. 641-664.