

Simulation and Degeneration: José Ingenieros and the Simulation of Madness by Delinquents

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Abstract

This article discusses the central problem of “La Simulación de la Locura” of José Ingenieros, published in Argentina in 1903. In this book, Ingenieros analyze peoples who have committed a crime and, in order to break free from prison, pretend to have acted without awareness of their actions. Ingenieros shows the precise moment that begins, in Argentinian psychiatry, the building of that psychiatric-criminological continuum that allows address the most varied legal issues from a medical point of view. From that moment, through the mediation of the theory of degeneration, it will be possible that an undefined set of behaviors enter in the field of psychiatric observation. For Ingenieros, the Criminal Law only could resolve the problem of simulation by integrating the new psychiatric perspective open with the theory of degeneration.

Keywords: José Ingenieros; Degeneration; Law; Psychiatry; Simulation

The simulation of madness by delinquents is the central focus of the book *La simulación de la locura* [The Simulation of Madness] published in 1903 by Argentinean psychiatrist José Ingenieros [1]. That work appears first as a result of the thesis defended in 1900 to earn the title of medical doctor. Three years later, the thesis was published as a book, with the initial chapter called *La simulación en la lucha por la vida* [Simulation in the Struggle for Life]. For this work, the *Buenos Aires Academy of Medicine*, would grant him the gold medal for the best Argentinean scientific study. Thus, as Cristina Fernandez affirmed, *La simulación de la locura* would establish Ingenieros’ fame as the most prestigious Argentinean alienist, sociologist and criminologist of his time [2].

Although Ingenieros spoke of an infinite variety of types of simulation, his study focused on three privileged forms: those that simulate a disease to avoid military service, those that fake this condition to receive assistance and finally, those who simulate madness¹. Criminal simulators belong to this latter group.

Upon reading Ingenieros’ paper a question inevitably rises, this question is formulated by Andrew Lakoff in this way: “Why would so many readers have been interested in this catalogue of the varieties of ways that madness was linked to simulation?” [4]. Nevertheless, the studies dedicated to this book, far from considering it as a catalog of forms of simulation, generally analyze the definition that Ingenieros introduces as the central argument of his study: “Simulation is a fraudulent act in the struggle for life” [SL, 107].

Since then, studies dedicated to analyzing Ingenieros’ biological evolutionism have proliferated; they focus on his references to simulation in the “struggle for life” and the role of “adaptation to the environment”. Those studies also discuss if these ideas stem from a Darwinian, Spencerian or Neo-Lamarckian theoretical affiliation. This debate will not be addressed here. The fact that there are criminals who had pretended to have acted without being aware of their actions to be free from prison, in anyway resemble to the different forms of mimicry, Mullerian or Batesian, that, in late nineteenth century and early twentieth century, were considered and accepted by evolutionists as paradigmatic ways of understanding the adaptive simulation [5,6].

¹About the influence of the studies of José Ingenieros in the development of Argentine positivism, see, among others: Hugo Vezzetti 1985 [3], *La locura en Argentina Buenos Aires*: Paidós; Hector Biagini 1980, *El movimiento positivista argentino Buenos Aires*: Belgrano, Rosa Falcone 2012, *Genealogía de la locura: discursos y prácticas de la alienación mental en el positivismo argentino 1880-1930*. Maria Carla Galfione 2013, “La sociología criminal de Enrico Ferri: entre el socialismo y la intervención disciplinaria”, in VII Jornadas de Sociología de la Universidad Nacional de La Plata.

On the other hand, the problem represented by simulated madness had been raised previously by authors such as Pinel, of course, without any reference to “struggle for life”. Thus, to understand the problem of delinquent simulators, who want to avoid a condemnation, it does not seem necessary to make any reference to evolutionism, although Ingenieros presented his arguments using a Darwinian rhetoric² [7].

Other studies dedicated to *La Simulación de la locura*, have also discussed the relationship between madness, crime and danger, relating it with a concern for creating the bases of the Argentine nation, analyzing simulation from the perspective raised by debates about social issues like alcoholism, prostitution or immigration [8]. Very often connections were made between the strategies of construction of the Argentine state and the theme of social evolutionism. I do not want to return here to these debates, but attempt to understand the epistemological foundation that, specifically in the field of psychiatry, could help Ingenieros to analyze the problem of simulation of madness.

La Simulación de la locura, like other texts by this author, is characterized by a great display of erudition. It offers a wide variety of references to biologists, criminologists, legal scholars and psychiatrists; making unnecessary literary references which range from Ulysses to Hamlet. Considering this proliferation of authors, it is not easy to understand Ingenieros’ epistemological affiliations, particularly in relation to mental health. Although he refers to different explanatory models, both in his theoretical arguments and in case analyses, Ingenieros insists essentially in one of them. In his arguments, there are recurring appeals to degeneration theory. We found there references to: anomalies; lesser forms of madness; physical and moral stigmas and morbid inheritance.

In the final decades of the nineteenth century, psychiatry was strongly influenced by a new representation of pathologies that spoke of hereditary degenerations³. Several studies were concerned with explaining of mental health, and new syndromes of degeneration and new physical and psychic stigmas arise. Ian Hacking [10] affirmed that a true “investigative program” began at this time, a very fruitful program, capable of concentrate the efforts of all those who shared a single concern: expand the scope and limits of mental medicine. At that moment, a broad spectrum of syndromes of degeneration appeared, including delusion of persecution, sexual aberrations, anomalies of behavior and an immense variety of fears and phobias. This investigative program would not only have an impact in France, Italy and Germany, but also in Latin America.

Ingenieros’ text reveals the influence of this theory in Argentina, in this case, to think of another way of seeing an old problem that had obsessed psychiatrists: the simulation of madness. Lakoff (2005) referred to an article published by Ingenieros in 1902, *Responsabilidad penal de los degenerados impulsivos*, [Penal responsibility of impulsive degenerates], in coauthorship with Ramos Mejía and Solari [11], displaying the relevance given to the stigmas of degeneration. Nevertheless, and even though Ingenieros made countless references to degeneration theory in *La Simulación de la locura*, fundamentally when we analyze the cases presented, there are few studies dedicated to conceptualizing the tracks left by this theory in Ingenieros’ analysis of simulation.

Psychiatry and simulation

Although the problem of simulation affects jurists and criminologists, it is up to psychiatry to determine if the delinquent is truly mentally ill or if he is just a simulator of madness. In this act, in this procedure of arbitration between truth and falsity of symptoms, there are countless legal, criminological, psychiatric and epistemological questions to be considered. As Michel Foucault affirmed:

The great problem of the history of psychiatry in the nineteenth century is not a problem of concepts, and it was absolutely not the problem of which disease: the true problem, the cross of nineteenth century psychiatry, was not paranoia and not hysteria. If it is admitted that in the psychiatric power the question of truth is never raised, it can be understood that the cross of nineteenth century psychiatry is simply the problem of simulation [12].

²For Adrià Casinos, referring to the late nineteenth century: “The struggle for life” was a manner of speaking, a coined phrase, used at that time in all the positivist nucleus, in both the Old and the New Worlds”.

³Ingenieros has published several texts to analyze the problem of race. This issue will not be addressed here. To analyze how the problem of race and the question of degeneration is linked, see: Claude Olivier Doron, *L’Homme Altéré* [9].

The problem of simulation of madness seems to be contemporary to the birth of modern psychiatry. We see this problem in the main texts of psychiatry during the nineteenth and early twentieth centuries. It first arose as a theme of interest in the *Traité médico-philosophique sur l'aliénation mentale* by Pinel, particularly in the chapter dedicated to "Simulated Mania and Ways to Recognize it" [13]. Later, in mid-nineteenth century, it will be a theme which attracts the interest of degenerationists. Benedict August Morel [14] analyzed a particular case of simulation, the Desrosieres case, published in the *Anales Médico-psicológicos*. The psychiatrist Armand Laurent [15] wrote *Étude médico-légale sur la simulation de la folie*. Soon with Charcot [16], by reference to *hysteria*, the issue of simulation returned to the scene, for example in *Leçons sur les maladies du système nerveux, faites a la Salpêtrière*⁴.

Foucault affirmed that there is a moment of rupture in the system of legal medicine. "A period that was particularly fertile for the relations between psychiatry and criminal law: the last years of the nineteenth century and the first years of the twentieth century, the time between the First Congress of Criminal Anthropology, in 1885, and the publication by Prins of *La Défense Sociale*, in 1910". [18]. It was precisely in this period that José Ingenieros wrote his study about simulation.

At this time, new alliances were established between medical and legal discourses. A significant transformation made possible by the progressive decline of the notion of homicidal paranoia, which had been used to explain all violent or criminal impulses. This psychiatric and legal concept was totally focused on the criminal act, excluding any question that was not referred to the homicide committed. That is, the doors are closed to the possibility of questioning, not the crime but the criminal. Foucault affirmed that in this period:

Paranoia would be abandoned because the idea of the mental illness of complex evolution had opened the road: the idea of mental disorders that could present this or that specific symptom in this or that state of its development, not only on the individual plane but in that of the successive generations: is the idea of degeneration [19].

In this framework, I propose to analyse the arguments of Ingenieros about the problem of simulation of madness by delinquents. The idea of violent and criminal impulse associated to the lack of awareness, would be gradually shifted. It would be affirmed that an insane person could maintain his capacity to reason and, nevertheless have uncontrollable impulses that would lead him to commit violent acts. This meant that the simulation of madness, with the purpose of avoiding a condemnation, was not a strategy exclusively employed by normal and conscious individuals, but also used by insane individuals. For Ingenieros:

If madness was, in a simple and absolute sense, a loss of the possibility to reason, as is generally believed, it would seem absurd to suppose that an insane person had the capacity to appeal to simulation to obtain advantages, of any nature, in the struggle for life. Moreover, it seems even more absurd that, in certain cases, the mentally ill would try to simulate symptoms of mental insanity that are distinct from their real ones. However, the belief that the mentally ill are incapable of reasoning has already been banished among alienists, and even among educated people, who have some knowledge of psychopathology [SL,135].

It is thus necessary to think of mental illnesses as a continuum that ranges from the small daily abnormalities to the most serious forms of crime. In that way, specific symptoms can be attributed for each state of development of a psychiatric disease. In this psychiatric-criminological continuum, not only major crimes, but also any infraction, can come to be object of psychiatric intervention. During the last decades of the nineteenth century, in this continuous between the normal and the pathological, emerges a set of small anomalies that win status of mental illnesses. It is for this reason that Foucault, upon referring to the theories of degeneration said: "certainly, between a woman who steals undergarments in a store and a mother who cooks her daughter's leg in a pot, in either one case or the other, the same question can and should be made: isn't it madness?" [19].

⁴In this regard see also, Guido Garbini [17].

This continuity between the normal and the pathological supposes the idea of a variety of pathological manifestations, whose gravity would increase during an individual's life, from childhood to adulthood, and during the successive generations of the same family. Thus, the psychiatrist may intervene in any situation that represents a risk, present or future, to society. Ingenieros situates himself within this framework when he affirms:

The last half of the nineteenth century saw the growth of curious and interesting psychopathology studies, unsuspected by old clinicians. Next to the normal and the insane man, these studies describe imbalanced types, ranging from genius to delinquency, from the lie to sexual inversion. In reality, all the individuals who Venturi calls "characteristic" [SL, 174].

This continuity between the small infraction and the monstrous crime was made possible by the acceptance, diffusion and expansion of the theory of degeneration. The theory have operated as a central focus for the discussion conducted by Ingenieros about the simulation of madness.

Authors such as Magnan, Sergi, Janet, Legrain and Ballet would study these subjects deviated from the average type by neuropathy or degeneration, without follow the clinical molds of the classic treatises. They reveal the mediocrity of the old clinic, whose feeble schemes do not help to explain cases, which are obvious to the conscientious psychologist who contemplates the infinite variety of anomalies. Alongside these permanent abnormalities, unmistakable with madness, however bordering on it, we find countless transitory disturbances of the psyche [SL, 175].

In this way, Ingenieros illustrates the moment at which began in Argentine psychiatry, the construction of this "psychiatric-criminological continuum, that allowed addressing in medical terms any degree of the penal scale" [19].

Although the theory of degeneration was enunciated for the first time by Morel [20], it would be with Magnan [21] that the articulations between the discourses of psychiatric and legal medicine began. As Truelle affirms: "in Magnan's time, legal-medical expertise was, if not exceptional, at least rare. He broadly contributed to extending and generalizing the psychiatric practice in the courts" [22].

Truelle [22] affirmed that Magnan helped to generalize the practice of psychiatry in the courts. Magnan insisted on the need of conducting psychiatric exams in order to identify simulators, avoiding undeserved sentences to the mentally ill. He also postulated the existence of a broad category of delinquents who, although they should not be confined in psychiatric asylums, should not be considered normal individuals. It is in this field opened by the theoreticians of degeneration⁵ together with the developments of positivist Anthropology that Ingenieros situated himself to respond to the problem of simulation. He affirmed:

It is necessary to go beyond the dissidences between the French, Italian and German schools, which give different interpretations of degeneration, although they coincide in what is fundamental, following the tracks brilliantly blazed from Morel to Magnan. For our purpose, it is enough to indicate that madness and criminality are related by degeneration. Madness and crime are two antisocial forms of individual activity that flourish on a single background of abnormality; they can germinate separately, but can do so simultaneously [SL, 229].

The theory of degeneration posed the problem of simulation of madness in a new space of analysis. It no longer involves, neither sane individuals who consciously decide to fake madness to hide a criminal act, nor alienated who commit crimes as a reaction to uncontrollable irrational impulses. From this moment on, between the classic madness plagued by deliriums and hallucinations and complete normality, is added a series of anomalies defined as mental pathologies: the heredo-degenerates, whose classification Magnan [28] presented in this table:

Synoptic arrangement of mental degeneracies Heredito-degenerates
1 - Idiocy, imbecility and mental debility.
2 - (Unstableness) Cerebral anomalies: balance defect of the moral and intellectual faculties.
3 - Hereditary episodic syndromes
(a) Doubt madness
(b) Fear of touching
(c) Onomatomania: 1) agonizing search for a word, 2) irresistible impulse to repeat a word,
3) fear of using compromising words, etc.
(d) Arithmetomania
(e) Excessive love of animals: antivivisection madness
(f) Kleptomania, dipsomania, oniomania (buying mania)
(g) Gambling mania
(h) Pyromania and pyrophobia
(i) Homicidal and suicidal impulses
(j) Sexual aberrations, perversions,
(k) Agoraphobia, claustrophobia, topophobia
4 - (a) Manic thinking, moral insanity (paranoia)
(b) Multiple deliria: delirium of ambition, religion, persecution, hypochondria.
(c) Systematized Delusion. Obsessive ideas
(e) Manic excitement, melancholic depression

Table 1: Synoptic arrangement of the Heredo-degenerates [28].

⁵About the theory of degeneration see, in addition to the studies already mentioned we suggest the classic texts of Molloy, Sylvia [23], "The politics of posing" and Daniel Pick [24], *Faces of degeneration. A european disorder 1848-1918*, New York, Cambridge University Press; Michel Foucault (1999), *Les Anormaux*, Paris: Gallimard; Rafael Huertas [25], *Locura y Degeneración*. Madrid: Centro de Estudios Históricos; Sandra Caponi 2015, *Locos y degenerados: una genealogia de la psiquiatria ampliada*, Buenos Aires, Lugar; Jean-Christoph Coffin [26], *La Transmission de la Folie- 1850-1914*, Paris: Harmattan. About the relationship between forensic medicine, hygiene and eugenics see Marisa Miranda and Gustavo Vallejo [27], *Una historia de la Eugenesia, Argentina y las redes biopoliticas internacionales*. Buenos Aires: Biblos.

Many of these syndromes of degeneration reappear in Ingenieros, characterized by physical and moral stigmas and by morbid inheritance. Instead of an opposition between reason and madness, Ingenieros prefers to speak of an infinite variety of psychiatric pathologies: from sexual deviated behavior to criminal aberration. Ingenieros' text presents various cases that display minor deviations in behavior, small simulations such as the young bohemian who says he is an artist, analyzed in detail by Andrew Lakoff [4].

Various cases of simulation presented by Ingenieros refer to degenerated subjects. The *Observation IX* of *La Simulación de la locura*, presents the case of a thirty-year-old Italian man, who is alcoholic and degenerate. The *Observation X* refers to a Brazilian youth of twenty-three, who has physical and psychic stigmas of degeneration. The *Observation XI* refers to a Catholic, Spanish man of 40, who murdered his work colleague; he has numerous degenerative physical stigmas. The *Observation XIII* refers to a thirty-five-year-old Argentine man with hereditary antecedents, an alcoholic father and an impulsive homicidal uncle [SL, 139]. The cases continue with references of this type throughout the book.

Ten years later, in Ingenieros' book *Criminología*, the references to degeneration remain. The *Second Observation* in the Appendix refers to a moral degenerate: a single, twenty-three-year-old youth who is a constitutional psycho-neuropath overcome by numerous stigmas of mental and physical degenerations, with congenital deficiencies [29]. The *Fourth Observation* refers to a subject with morbid antecedents, who belongs to a family of degenerated neuropaths [29]. The text continues with the report of many similar cases. As Ingenieros says:

In reality, all degenerates show mental anomalies; it is not possible to speak of purely morphological degeneration without psychic stigmas, because the psyche cannot be considered as anything but a function of the organism. In this vast framework, madness and criminality are like high notes in the range of degeneration, two extremes between which a multitude [of individuals] are found. Individuals that although not being honest, they are not criminal; and without being sane, they do not deserve the asylum. In all these cases the psychic degeneration accompanies the morphological degeneration [SL, 63].

It is no longer a question, as in classical psychiatry, of unmask concealment strategies of simulators. For degenerationists, as for Ingenieros, what matters is the knowledge of the entire life of the individuals, their stigmas, their childhood pathologies, their family history, the illnesses in their families, if their fathers were alcoholics or not. Therefore, we can say that for Ingenieros, the delinquent simulator is always, in one way or another, a degenerate.

About laws and simulations

This new way of understanding psychiatry, this new form of asking about madness, requires a complete transformation of the criminal code that allows expanding the field of what should be considered as legally punishable. The issue was:

In the criminal law, madness is represented by defined clinical forms that confer irresponsibility; the psychic anomalies of the simulators do not correspond to the clinical-legal concept of madness as an imminent cause of the crime. The delinquent simulator does not simulate because he does not have true psychic anomalies, but despite having them [SL, 102].

This indicates that the problem of the simulators is linked to the difficulties specific to a legal discourse focused on the metaphysical idea of responsibility. As early as 1830, the French Napoleonic Code included the famous article 64, which determined not imputability in cases of dementia or fury. It is worth remembering article 64 of the former French Penal Code of 1810, which was valid until 1992: "*Il n'y a ni crime ni délit lorsque le prévenu était en état de démence au temps de l'action, ou lorsqu'il a été contraint par une force à laquelle il n'a pu résister*" (Simenon 1968, 23)⁶.

⁶"There is no crime or infraction when the accused had been in a state of dementia at the time of the event, or when he had been compelled by a power that he could not resist".

According to classic legal categories, when it is discovered that the symptoms are faked, the individual identified as a simulator will receive a sentence determined by the gravity of the crime. On the contrary, if it is revealed that the madness is not simulated but real, it will be a psychiatric analysis that will define the type of treatment. For example, the individual could be committed to an asylum until his health is re-established, returning then to normal life. Each one of these elements is present in the Argentine legal code, since 1887, drafted by Tejedor, to whom Ingenieros refers [30]⁷. He considered the Code is deficient and, thus, he insisted on the need to replace it by a new legislation. Nevertheless, the Argentine Penal Code would only be revised in 1921, "abandoning in general terms, the classic model" [31]. We recall that according to article 81, first subsection, of the code drafted by Tejedor, it is exempted from punishment, "one who had committed the act in a state of madness, sleepwalking, absolute imbecility or drunkenness, complete or voluntary; and generally, whenever the act had been the result of, and consummated in, any disturbance of the senses or the intelligence" [SL, 163].

Thus, although this penal code opens the possibility of using the strategy to simulation of madness by delinquents, it does not allow defining any valid criteria to unmask simulators. Given the ineffectiveness of the statistical studies, based on metaphysical criteria to identify normality of pathology, there would only seem to exist one form of resolving the problem of simulation: transform the existing criminal law⁸.

"In the existing criminal law, madness is represented by defined clinical forms that confer irresponsibility" [SL, 102]. These defined clinical forms respond to the classic diagnoses of mental illness, those that, with some variations were defined by Pinel: mania, melancholy, dementia and idiotism. For this reason, the delinquents, who intend to avoid criminal punishment, simulate "clinical-legal" forms of insanity and not typical abnormalities. The simulated forms (which confer a lack of responsibility) refer to five groups of syndromes: 1- manic, 2- depressive, 3- delirious, 4- psychotic episodes, and 5- confused states of dementia [SL, 102].

For Ingenieros, resolving the problem of simulation requires adapting the legislation to the latest scientific conquests realized by psychiatry, integrating this perspective to the contributions of positivist anthropology.

Even if the simulator was able to evaluate and anticipate the consequences of his action, knowing that by faking the established clinical forms he or she could avoid detention, this does not mean that criminals simulators are free to suffer other psychiatric abnormalities. However, these anomalies are different from those defined by the criminal law. "The delinquent does not simulate because he does not have true psychic anomalies, but despite having them" [SL, 101]. However, since the psychic anomalies suffered by the delinquent simulators do not confer motives to declare them not imputable, they simulate these pathologies accepted by the Penal Code.

For Ingenieros, every delinquent is a psychologically abnormal individual, and the origin of this abnormality is a "congenital or acquired degenerative basis" [SL, 190]. Therefore, "all simulators of madness, as delinquents, are mentally abnormal; but the possibility of simulating madness for legal purposes, occurs in inverse ratio to these abnormalities. The most degenerated delinquents are less apt to use this defensive measure in their struggle for life" [SL, 192]. To the contrary, those who have less stigmas of degeneration tend to simulate more.

Thus, to establish the correlation between the crimes and the sentences, it was necessary to consider a third element, an intermediary link: the delinquent subject. Foucault would say that it is with Garófalo [32], and his "law of the third element," that the character of dangerous individuals entered in the penal system: "Penal law only knew two terms, the crime and the penalty. The new criminology recognizes three, the crime, the delinquent and the repressive measures" [19]. It is based on this third element, a subject legally dangerous and psychiatrically degenerate, and not according to the crime, that the penalty should be defined.

⁷This Penal Code was enacted on March 1st, 1887, and was valid until the enactment of the Penal Code of 1921 which is in force until today, although with numerous changes. Article 81 of the code of 1887 corresponded to the current article 34, which maintains the principle of unimputability of the insane.

⁸Various proposals for reformulation of the Penal Code followed in Argentina, that article 81 mentioned by Ingenieros was replaced by article 34 of the penal code of 1922, which determined Art 34-1º: "A person cannot be punished who at the time of the event, was not able, because of insufficiency of his faculties, because of morbid alterations to them or because of a state of unconsciousness, error or ignorance of facts that are not imputable, to understand the criminality of the act or control his actions."

From this new perspective, simulators would no longer represent an epistemological challenge for psychiatry. They would no longer reveal its limits, or question its truths, faking symptoms and creating lies. Ingenieros' delinquent simulators, because they present the anomalies specific to the various categories of delinquents, participate in the broad pathological gallery of the abnormal and degenerate.

When more evident and notorious the stigmas of degeneration were, more difficult it would be to create simulation strategies that could fool the experts: "Among the natural-born delinquents, there are fewer simulators, there is no spontaneous tendency towards simulation" [SL, 102]. Meanwhile, among those people who are abnormal, whose signs of degeneration are less notorious, there is a greater capacity to create strategies for falsity, simulating the pathological forms that can exempt them from a sentence. Thus, it is deduced that "the possibility for simulation is found in inverse ratio to the degree of psychic degeneration of the delinquent" [SL, 107].

In existing penal law, all of the resources employed to unmask simulators had failed. The use of coercive means, drugs and poisons, mechanical methods like cold showers, or modern techniques such as *plethysmography*, simply did not work. By rejecting all of these strategies as being ineffective, Ingenieros concludes:

The only specific study of delinquents is, in our understanding, that of their psychic functioning. They have the common deficiencies of degenerates, but in a special manner; for this reason not all degenerates become delinquents. Studying the criminal morphology in delinquents, we observe the existence of characteristics common to all degenerates [SL, 184].

Not every degenerate is a delinquent, but every delinquent, whether simulator or not, is a degenerate. Thus, the character of the delinquent simulator becomes a key for defending the modification of the existing penal code. By proposing the substitution of the criteria of individual responsibility for the criteria of "the danger posed by the individual", it is created the possibility of subordinate penal law to psychiatric discourse [31].

A security dispositive

After having demonstrated that the simulation of madness by delinquents is born from legal criteria with which the sentence is applied, based on responsibility, Ingenieros' objective was to anticipate the criminal act, to identify the delinquent, even before he commits a delinquency. However, to create a measure of prevention and security that permits preventing crimes, it seems to be necessary to resolve an old problem:

A barrier found is the lack of uniform criteria for interpreting mental alienation, separating it from simulation. Where does mental health end? Where does madness begin? This is one of the most arduous issues faced by Alienists, which never found a definitive formula for resolving it [SL, 175].

If this epistemological question seems impossible to be responded, it is because, according to Ingenieros, the classical psychiatry and criminology had ignored the existence of intermediary states between normality and madness. The most recent developments of psychiatry, made by followers of Magnan and Legrain [33], allowed to reorganize the penal law on new scientific bases. On the other hand, and once it is demonstrated that:

The simulation of madness by the delinquents is born from the legal criteria with which the sentence is applied, according to whether the individual could be held responsible or not, the prophylaxis should consist in a legal reform that would make the simulation noxious to the simulator [SL, 184].

Following the postulates defended, since 1890, by the positive school of Criminal Anthropology and by the International Association of Penal Law, Ingenieros proposed replacing the organizational focus of the legal system around the theme of security. "By replacing the criteria of the lack of responsibility of the delinquent for social defense, in proportion to the temibility, simulating madness will become harmful to the simulators, and will tend to disappear from the forensic psychopathology" [SL, 103].

The legal framework no longer will favor the simulators, when, on a new basis, the penal law integrate the scientific developments of new psychiatry; because in such context, “simulation would be disadvantageous” and would tend to disappear. For this, it should be abandoned the idea that the courts must punish perversity, intentions, responsibility and awareness, ignoring something more relevant: the dangerousness or risk presented by the delinquent.

This shift operated in the medical-legal field by Ingenieros, supposes a new way of understanding the relationship between criminality and mental illness, which had been present in Chapter VIII of *Les dégénérés* [33]. They affirmed that “by the very fact of his mental state, the degenerate frequently becomes a delinquent” [33], a thesis that Ingenieros would reconsider and go a step farther by affirming, as did Lombroso¹⁰, that every delinquent is a degenerate. Magnan and Legrain defend, as Ingenieros would do later, the need to modify the old penal system and abandon the issue of responsibility, substituting it for that of the threat. They conclude, as would Ingenieros, that it is necessary to guarantee prevention and prophylaxis of crime by identifying the danger presented by the individual¹¹. The latter issue appears not only in the *Simulación de la locura*, but also in the book *Criminología*, particularly in Chapter VIII, called “*Las nuevas bases de defensa social*” [The new foundations of social defense]¹². We can say that for Ingenieros, as for the psychiatry analyzed by Foucault:

The notion of degeneration would allow relating the lesser of the criminals with a pathological danger to society, to the human species as a whole. The entire space of the infractions can be conceived in terms of danger and therefore of protection that must be assured. The law no longer has the option to remain quiet or cover its ears and refuse to listen [18].

Advocating for the abandon of the old Penal Code, Ingenieros refers the case of a criminal simulator named Juan Passo [SL, 283]. Two judges, who focused their evaluations on the issue of responsibility, considered him differently. One judge interprets the responsibility as it is in the Criminal Code, stating that Passo, despite being a moral degenerate, is not an alienated and is therefore responsible for his actions. The other judge analyzed the case from the perspective of psychiatry, affirming that Passo had gave abundant indications of degeneration; and for that, he would be a mentally ill person, that cannot be considered responsible for his actions.

Ingenieros concluded that this discrepancy would not exist if, instead of focusing the debate on the theme of “responsibility”, the judges had asked about the “danger” presented by the individual: “Both parts coincide in indicate his intense moral degeneration. And as a moral degenerate, [he is] dangerous because of the absence of social sentiments, nobody would have dared to ask for absolution” [SL, 284]. Magnan and Legrain use the same strategy. They analyzed various criminal acts committed by different types of degenerates, presenting two different perspectives. They show that these individuals can be seen by some judges as being responsible for their actions, and by other judges as not being responsible; although when their degree of danger is evaluated, the coincidences appear. Like Ingenieros, in response to the question about whether the criminal is responsible for his crime or not, Magnan and Legrain [33] respond: “We do not know anything, we are ignorant, we do not know if he enjoys free will, we only know one thing: that he threatens the interests of all”.

As the theory of degeneration had established, psychic abnormality and legal danger go together: “As branches born from the common trunk of physiopsychic degeneration, criminality and madness have a close relationship. Thus, since crime is more frequent among the mentally ill than the sane, madness is observed with greater frequency in delinquents than among the honest” [SL, 185].

Ingenieros also takes up the postulates defended by the International Penal Law Association. Foucault summarizes these postulates by affirming that: “The difference is not between those with responsibility who should be condemned and irresponsible individuals who should not be, but between individuals who are absolutely and definitively dangerous and those who, given certain treatments, may cease to be” [18].

The alliance established in the late nineteenth century between psychiatry and legal discourse, and between degenerationists and the positivist school of Anthropology, had various goals. It aims: abandoning the legal notion of responsibility and substituting it for the idea of threat; showing that individuals that were considered irresponsible by criminal law, represented a greater danger to society; and redesigning the social function of punishment and the character of the criminal sentence, transforms it into a preventive strategy for social defense [18].

⁹For an analysis of the intermediary states and the different forms of degeneration in criminals see: Magnan & Legrain 1895, 206, *Les Dégénérés: État mental e Syndromes episodiques*, Paris. Rueff.

¹⁰About the criticism of Magnan and Legrain a Lombroso, see *Les degeneres*, p.195.

¹¹This type of analysis will be taken up later, almost identically, in the book *Criminology*.

¹²Parts of this chapter were published in 1914 in *Archivos de Criminologia, Psiquiatria y Medicina Legal* with the name: “*Psiquiatria nueva y leyes viejas*”. See Galfione, “*La sociologia criminal*”, p. 35.

It is in this general framework that we should locate Ingenieros' response to the problem of simulation. Given the impossibility of identifying the delinquent simulators, considering the relativity and the lack of certainty of the means existing to discover their fakery, the only possible alternative was to create strategies for anticipation and dissuasion. In his words, if "there is no absolute certainty that the simulator could not fool the experts, deceiving the courts", then, "we can only suppress the simulation of madness by delinquents by preventing it" [SL, 286]. For this reason, Ingenieros proposed:

To shift the absurd bases of the current sentencing system, for the scientific bases of psychopathology, which would make more effective the defense of society against criminal acts. Similarly, the sentence, degraded by the idea of revenge and punishment to which it is associated, should cede its position to a broader and safer social defense [SL, 289].

This calls for a new form of articulating the crimes and punishments. Beginning with the strategies, both prophylactic and repressive, for the defense of society, proposed by Garófalo [32], Lombroso [34] and Ferri [35]¹³, Ingenieros claims to follow the scientific program of social defense established by the positivist school¹⁴. This program distinguishes four punitive categories: (a) preventive measures; (b) restorative measures (indemnification of the victim); (c) repressive measures (variable sentences) and (d) eliminatory measures (life sentencing, deportation, and the death penalty) [SL, 290].

Nevertheless, for these measures of social protection to be limited to repeating the old legal evaluations, focused on the crime and the theory of proportionality of the sentence, it would be necessary to take one more step. The courts must focus on anti-social elements that threaten security, moving the attention from the crime itself to the personality of the offender. This is how Ingenieros describes this process:

Given that their objective was to prevent the delinquent from exercising his antisocial tendencies once again, the logical consequence is that the sentence should not be adapted to the crime, considered abstractly; but to the delinquent, considered as a concrete dangerous reality. The position of the delinquents changes considerably if criminal repression is based on his threat and not on his responsibility [SL, 290].

This shift also inverted the role of legal and psychiatric discourses. If in classic criminal law the decision about the form of the sentence fell within the realm of the courts, the legal discourse should now subordinate itself to a psychopathological evaluation of the delinquent. When a threat to public safety is involved, only psychiatric knowledge appears to be competent for evaluating the degree of danger that a delinquent would present in the future. It is the psychiatrist who should define in what category of abnormality an individual is inscribed, and who should define the suitable type of punishment.

Taking an additional step in the direction established by Ferri [35], three forms of punishment or repression arise: maximum repression aimed at natural-born delinquents, but also at the habitual and incorrigible; medium repression, for habitual and corrigible delinquents, with transitory psychosis; and minimal repression for the occasional and incidentally impulsive criminals.

¹³For a more detailed study of the problems that characterize positive anthropology, see Luis Ferla, "La pericia médico legal como forma de producir la Verdad y sus adversarios en los tribunales brasileños de Entreguerras", *Asclepio* 2014, 1-13, *Revista de Historia de la Medicina y de la Ciencia*- 66 (2).

¹⁴Magnan and Legrain present some objections to Lombroso's theory from the point of view of the theory of degeneration. They affirm that crime and degeneration cannot be identified in all cases, although there are degenerates who can come to be criminals, others have attenuated stigmas of degeneration, there are also delinquents who do not have stigmas of degeneration (1985, 192). Upon analyzing the cases presented by Ingenieros, a clear distinction is noted between natural-born criminals, characterized as strongly degenerated (who simulate less), criminals who have fewer stigmas of degeneration (those who simulate more) and others who have no stigmas of degeneration. As Lakoff affirmed (2012, 856) there is in Ingenieros a certain "disagreement with Cesare Lombroso and the majority of European criminologists, for whom inherited degeneracy was the best way to explain criminality".

In this new criminal law focused on public protection and on the threat posed by the delinquent, where the justice system is subordinated to psychiatry, Ingenieros finally announces the only strategy that he considers viable for facing the problem of simulation. It does not demand discovering the fakery or the fiction, which he recognizes to be impossible, but to anticipate the occurrence of fraud, that is, to guarantee “the legal prophylaxis of the simulation of madness” [SL, 256].

According to Ingenieros, it became necessary to transform the simulation of madness into an act that is harmful to the delinquent simulators, so harmful that this problem would disappear from forensic psychopathology. For Ingenieros, the legal considerations should be subordinated to a clinical-psychiatric study of delinquents, focused on the determination of the degree of danger they pose [SL, 291]. This would transform the legal status of the simulator. The simulation would no longer create an effective alibi and would become a factor for aggravated criminal punishment.

Ingenieros’ argument focuses on showing that, if we observe the attribution of the sentences considering threat and not responsibility, in no case could it be advantageous for the delinquent to simulate madness. In the case of the alienated delinquents, he distinguishes two types of condemnations: an extreme one for those who have congenital or permanent psychosis, and a moderate sentence for those who committed a crime as consequence of a transitory disturbance. He affirmed that simulation, by definition, refers to permanent states that last after the act is committed, and that remain during the investigation, so that the delinquent simulator thus runs the risk of receiving a maximum penalty. It would also not be convenient for the passionate or occasional delinquent to simulate madness, because for the same reason, he would risk receiving the maximum penalty. The natural-born delinquents would obtain no advantage from simulation, because according to the criteria of dangerousness, they would always be subject to the maximum sentence.

In the final case, it could even represent a disadvantage, because “madness, aggregated to the criminality because of intense degeneration implies a greater threat from the individual” [SL, 292]. Thus, simply by using as a strategy of dissuasion the gravity of the sentence, Ingenieros deduced that simulation would tend to disappear. Delinquents would discover that simulation would harm their sentencing, and that by simulating madness they risk receiving a maximum sentence. We can say that, for Ingenieros, what permitted resolving the problem of simulation is summarized in this *aphorism of forensic psychiatry*: “Madness is not exculpatory of responsibility, but aggravates the threat presented by those who suffer from it, requiring greater rigor in social defense” [SL, 292].

Dissolving the simulation problem

We can say that the strategy presented by Ingenieros to eradicate the problem of simulation is no other than dissuasion. So that, more than responding to the problem of simulation, Ingenieros dreamed its disappearance. This disappearance is achieved when the criminal law could be transformed, when the temibility would be privileged over responsibility. Then the delinquent would give up simulating a state of madness that would come to be considered as an aggravating factor for the sentencing. It is fear, raised to the category of social prophylaxis, which would allow anticipating and avoiding simulations. Ingenieros’ response to the problem of simulation means nothing less than the hope that the delinquent would give up pretending to be mad, for fear of a sentence that could be even greater than that which corresponds to his crime.

If we recall that the problem of simulation is one of the greatest issues of psychiatry since Pinel, for which authors such as Laurent or even Magnan sought to create strategies to unmask the simulators to protect the truly alienated, Ingenieros’ response does not fail to be disturbing. What we see is an explicit recognition of the incapacity of psychiatry to discover the simulators.

This recognition clearly shows the difficulty, inherent to psychiatry, to establish parameters of distinction between the normal and the pathological. Thus, considering the impossibility of responding to the epistemological problem posed by simulators, which is the problem of legitimacy, validity and limits of psychiatric knowledge, Ingenieros recurs to the exercise of the psychiatry power. The strategy of power follows these two rules: maximum repression for the delinquents that present indications of dangerousness, and exemplary punishment for the abnormal or degenerates who have committed a crime. The crime committed no longer matters, but the risk that the individual implies for society.

The transformation of the Penal Code, abandoning responsibility and substituting it by dangerousness, would not only anticipate and avoid fictions created by simulators trying to escape from an aggravated punishment, but also would finish with the epistemological challenge that the simulator represented for psychiatric knowledge. What simulators putted in question was the ability of psychiatry to determine whether an individual was sane or insane, if he was or not imputable. That is like saying that the simulation of madness challenged the very distinction between madness and normality, which is inherent to psychiatry.

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