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## International Union of Criminal Law

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## THE INTERNATIONAL UNION OF CRIMINAL LAW.

DR. J. A. VAN HAMEL.<sup>1</sup>

In offering to the readers of this JOURNAL, the organ of the American Institute of Criminal Law and Criminology, a sketch of the International Union of Criminal Law, founded in 1888, I feel like introducing to them an elder sister grown up and living at a distance and perhaps only vaguely known to her American relative. Both the American and the European Institutes are born of the same spiritual mother, they are striving to accomplish similar ends and are aiming at the same ideals. But the activities and influence of neither is any longer confined exclusively to Europe or America.<sup>2</sup> In October, 1910, some continental delegates, among whom were the president and the acting secretary of the International Union of Criminal Law, Professor Prins of Brussels and Dr. Rosenfeld of Berlin, attended the International Prison Congress at Washington, where they had the pleasure of seeing a group of American criminologists, members of the American Institute of Criminal Law and Criminology, join their association, and so this bond of scientific internationalism was extended across the Atlantic.<sup>3</sup> They are children, as I said, of the same mother, and but for different surroundings, very much alike in character and purpose. Let me first speak of the curriculum vitæ of the International Union of Criminal Law, or, as it is ordinarily designated in the peaceful twinship of two languages, "Die Internationale Kriminalistische Vereinigung" ("I. K. V.") and "L'Union Internationale de Droit Penal."

It was founded as a fighting body composed of criminalists from different European countries, who wanted to give a new impulse to their branch of investigation, and to profess a new creed in penal science. "We want," they said in their articles of association, "to have recognized in jurisprudence and in legislation, the idea that crime and punishment should be looked at from a sociological point of view as much as from a

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<sup>2</sup>Groups of the International Union of Criminal Law have been formed in the following countries: Belgium (20 members), Denmark (62), Germany (340), Finland, France (45), Greece (7), Italy (3), Croatia (34), Luxemburg (2), Holland (32), Norway (17), Austria (90), Roumania (2), Russia (291), Sweden (9), Switzerland (41), Servia (3), Spain, Hungary (96).

<sup>3</sup>The President of the American Group of the International Union of Criminal Law is Professor Charles R. Henderson of Chicago. Applications for membership in the group may be addressed to Prof. E. R. Keedy, 87 East Lake street, Chicago.

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judicial one.”<sup>4</sup> They opposed what is called the “classical” or “legal” school of penal science and reproached its partisans because they attached too little importance to the social and realistic side of criminality. Codes and definitions dogmas and technicalities, abstract notions and philosophical deductions, formed the principal points of interest in the creed of the latter school. Punishment was regarded by them as a formal matter only, to be arithmetically and judiciously measured out, but administered without testing its real power to reduce or prevent crime. The founders of the International Union, on the contrary, emphasized the necessity of research of facts and reality in the vast territory of crime, the scientific study of its causes and conditions, the pursuit of practical measures and the creation of institutions to guard society against it. Perhaps it may sound strange to American ears that such a difference could arise, and that such an organization seemed necessary for the proclamation of these simple truths. But they will have to remember this: it has always been one of the most beneficent characteristics of the Anglo-Saxon penal jurisprudence, that it kept away from purely theoretical reasonings and was influenced mostly by realistic views. It used to be quite different among lawyers and criminologists of the European continent. There the blinding lights of metaphysical philosophy and abstract thinking have ever been pouring into the domains of criminal jurisprudence and have tended to create erroneous conceptions which a simpler doctrine might have prevented.

It has been said, on the other hand, that the International Union underrated the “classical” school, which it opposed, and that this school never was so indifferent to the sociological problems of criminology as its opponents maintained. Luckily, we do not have to go into this controversy, since in the course of recent times a measure of fusion has been effected. The European criminologist who now-a-days fails to look at crime, at the criminal, and at the penal law, as real concrete things which have to be dealt with as social phenomena, would be regarded very much as a fossil. It is due in no small part to the coöperation which the International Union has gradually secured from scholars of differing minds and views, that this has been effected. On the other hand, the “modern school” must appreciate, on its part, the value of scientific coöperation and compromise, and it has come to recognize that some of the conclusions reached with unanimity and enthusiasm in the beginning needed careful and critical reconstruction.

For more than twenty years the International Union of Criminal Law has been an active and influential factor for reform in the penal

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<sup>4</sup>Definitely adopted in 1897.

system of the European countries. It has succeeded in stimulating an interchange of ideas and experience, by arranging periodical conferences, and by eliciting extensive preliminary reports containing valuable information and observations on different subjects.<sup>5</sup> Thus the suspended sentence, introduced in Belgium and France, has through the annual bulletins of the Union, been made more widely known to the judicial and academic world of various countries. Likewise the principle of the indeterminate sentence was analyzed and brought to the attention of European minds. It was through the International Union that the clear and realistic conceptions of a modern penal code like that of Norway with its intricate subjects, such as "intent," "complicity," and "attempt," were made more familiar to the legislators of other countries. And last, but not least, its meetings and publications offered a profitable medium for the interchange of ideas and experiences. Its three eminent founders and leaders, pioneers in the "modern criminological school," were Prof. Adolf Prins (Brussels), Prof. Franz von Liszt (Berlin) and Prof. G. A. Van Hamel<sup>6</sup> (Amsterdam.)

From the beginning it has been one of the principal aims of the movement to make it clear that the traditional penal systems were too rigorous on one side and not efficient enough on the other and that in some respects they tended to foster criminality instead of preventing and repressing it. This is indicated by the program of the first session of the Union (Brussels, 1889), which considered the following topics: (1) Is the suspended sentence ("condemnation conditionelle") desirable? (2) What penal methods is it possible to substitute for the undesirable short prison sentences? (3) What are the defects of most modern legislations in regard to the treatment of recidivists? (4) Treatment of juvenile offenders, including determination of age under which no criminal proceedings should be taken, and extension of reformatory school treatment.

These were the initial subjects for consideration at a time when in the continental minds and legislations most of these subjects were still in a quite primitive state of development. I do not purpose to follow their various stages of evolution through the conferences and publications of the Union, but let me mention that at the present time quite a different state of things has been effected, of course, not through

<sup>5</sup>These reports are published in the periodical Bulletin of the Union, Mitteilungen der Internationale Kriminalistischen Vereinigung. Bulletin de l'Union Internationale de Droit Pénal. J. Guttentag, Verlagsbuchhandlung, Berlin. Part 2 of Volume XVII., pp. 576 has just appeared from the press. These annual bulletins are valuable contributions to the literature of criminal law and criminology and are sent to all members of the Union.

<sup>6</sup>Father of the writer of this article.

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the agency of the International Union alone; yet certainly under its influence and directing hand. The fight for the suspended sentence has been won in nearly all European countries, my own country, Holland, sometimes over-cautious, being unhappily one of the last to join the ranks. The treatment of juvenile offenders has wholly changed our penal system; it is becoming—and I am glad to say that here Holland has played an exemplary part—more humane, more rational and more efficient. It may also be said that legislation concerning juvenile offenders by which the administration of penal justice has been more and more regarded as first of all a branch of social service, is now more and more supplying the guiding principles among the modern school of criminologists, for penal legislation relating to adults.

The question of the short prison sentence is not yet solved. Many and many times the International Union has taken up the problem and studied the proposed substitutes for this often quite unsatisfactory method of punishment. The introduction of the suspended sentence has brought considerable relief; probation work will do more. Practical organization of financial punishment and well-organized methods for securing the payment of fines (subjects discussed already in 1891 at the meeting at Christiania) are still in an embryonic state of development. On the other hand, the necessary reform of prisons themselves has been brought to the front (Antwerp, 1894), and it may be said that the general decline of admiration for imprisonment as the ideal form of punishment is largely due to the influence of the International Union.

The most difficult part of its task has been the problem of the recidivist. In connection with this problem, the Union has conducted elaborate statistical researches, statistical study of criminality being regarded as one of the principal methods for obtaining more definite knowledge of the enemy to be attacked. At the conferences at Paris, 1893, and Antwerp, 1894, the scientific method of recidivist statistics was discussed, and at Hamburg, 1907, a plan for international comparative statistics suggested. But it seems difficult to find a solution satisfactory to all parties. Certainly a more reasonable treatment of first and occasional offenders will prove to be half the work in this respect. Then there remains the problem of habitual offenders—a problem upon which much light has been thrown by anthropological and sociological researches—dependents, mental imbeciles, professional criminals, inebriates, professional vagrants, etc. More and more the methods of dealing with classes of criminals in a satisfactory way has become the *piece de résistance* on the programs of the International Union. Finally, quite a detailed system of preventive and curative institutions has been worked out

(Conference at Hamburg, 1907). But here difficult and fundamental questions are still waiting their solution, especially this one: How far may legislation go in determining a state of dangerousness to the common safety (*état dangereux, Gemeingefährlichkeit*), which would justify the confinement of a person whether he be delinquent or not? On this subject there has been a very remarkable and lasting difference of opinion among the members of the Union; remarkable because it is connected with a difference of political and fundamental philosophical convictions. It is not by accident that especially the German members, led by von Liszt, are declaring themselves in favor of rigorous and determined though humane measures against this class of offenders. On the contrary, the French Group, represented by its leaders Gabriël Tarde, Garçon, and Garraud, seconded by the Russians (liberals in their country), and others, have maintained the necessity of respecting the rights of the individual and of safeguarding them against elastic formulas or arbitrary confinements. This controversy also crops out in the discussions, when the German school recommends for habitual criminals an indeterminate preventive confinement after the expiration of the prison term, while the other parties declare this preventive confinement to be contrary to the social and ethical conception of "punishment."

So the result is that for the real recidivist the principle of the relatively indeterminate sentence has now been adopted. Indeed the principal difficulty is not lying here. But it still remains to be settled, even after the conference of Amsterdam (1909) and Brussels (1910), how far a legal definition of "danger to the common safety," covering also non-recidivists, will be agreeable. In this respect much will depend on the shaping of the measures to which this "state of dangerousness" is made to lead, and here indeed is the need for a liberal, humane and intelligent organization of institutions.

I will conclude my summary by merely referring to the other subjects that have appeared in the platform of the International Union.<sup>7</sup> In late years we find an interesting movement to obtain efficient international relations for mutual assistance of police authorities, extradition, and other measures, necessitated by the growth of international crime; defraudations; prostitution; "white slave trade," etc. At the meetings at Hamburg (1907) and Brussels (1910) a number of very important reports and discussions on this subject were made and may be found in the bulletins of the Union.

In the domain of criminal procedure, the following subjects have

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<sup>7</sup>A detailed and critical account of the development of the International Union of Criminal Law will be found in Dr. Kitsinger's book: *Internationale Kriminalistische Vereinigung, Betrachtungen über ihr Wesen und ihre bisherige Wirksamkeit*, von Dr. Friederich Kitsinger (1905, München, Beck).

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been treated: Summary proceedings (Petersburg, 1905); preliminary investigations (Budapest, 1903); settlement of damages suffered by the victims of an offense (Christiania, 1891); rehabilitation (Hamburg, 1907), and psychology of witnesses (Brussels, 1910).

It will be seen from these brief remarks, that in many respects the European criminologists have been discussing for years and years matters that from the beginning appeared quite natural to their American friends. I will even go further and state that some important principles, such as reformatory treatment, the suspended sentence, probation, and others have influenced European thought and practice. So far as practical institutions are concerned, the International Union has found American experience of great value.

In two respects, however, the European Union has been, and is, more original: first, in taking up the systematic and definite study of crime and criminals as social phenomena; and, secondly, in compelling the recognition of its importance by the legal profession. On the occasion of my visit to the United States in 1910, I was surprised at the wide and remarkable separation which seemed to have existed until a very recent date, between two departments of knowledge each admirably cultivated for itself: sociology and law, especially criminal law. The founding of the American Institute of Criminal Law and Criminology is an indication of the closer drawing together of these two branches of knowledge. The European International Union of Criminal Law, aiming at it from the beginning, can show by the experience of twenty years that a closer relation is quite possible and desirable, for the combination of the criminological and the legal current is necessary to obtain definite and satisfactory results. The jurist must "feel" sociologically and the social investigator must realize that the assistance of the lawyer is needed to make his researches fruitful. There must be coöperation of practical energy and theoretical investigation. I do not deny that in Europe we sometimes exaggerate the importance of the latter. But still we are eager for the first and by strengthening our connections with our American partners, we hope to derive benefit from their rich source of social activity and scientific originality.

The European and the American associations for the study of criminal law and criminology are both engaged in an important movement for adapting legal and traditional institutions to social betterment; both are animated by the conviction that the criminal should not be treated as an abstraction, but as a human creature, with wants and faults that have to be taken into consideration, and with due regard to which it is necessary to act in order to prevent further injury to himself and to society, of which he is a member.