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William W. Smithers

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THE 1910 MEETING OF THE INTERNATIONAL UNION OF  
PENAL LAW.

WILLIAM W. SMITHERS.<sup>1</sup>

The Bulletin of l'Union Internationale de Droit Pénal (*Internationalen Kriminalistischen Vereinigung*) has recently appeared, giving an account of the annual meeting of the union at Brussels in August last. The meeting was attended by the leading European criminologists and jurists and the discussions reported reveal that the old theory of the moral responsibility and free will of criminals is on the defensive. Just upon that point, considered of the highest importance by most students of criminal jurisprudence and penology, the International Penitentiary Congress, which met in Washington last October, was a disappointment. It suggested nothing scientifically new upon criminology, although learned addresses were delivered upon many phases of the traditional doctrine of penology, of late years so seriously questioned. These European savants are not content with the existing theory, recognizing that it has been overlong tried and found to be sadly wanting. They are earnestly striving to work out the details of the modern doctrine that crime is a symptom of moral disequilibrium and should be dealt with according to the social danger involved. It is true that a shadowy forecast of this doctrine has for some years appeared upon works of different writers. For instance, Lombroso, in leading the continental positive school, and MacDonald, in this country, have both denied the elements of free will and moral responsibility, but they have attempted to supply no connecting link with the principles of individual liberty or safety to society as factors in re-founding criminal jurisprudence. The most forward intimation along this line came first, not from a lawyer, but from Dr. Grasset, medical clinical professor at the University of Montpellier. In a work published by him at Paris in 1907, entitled "Demifous et Demiresponsables," he suggests that there is a field of "limited responsibility" as well as the extreme types, and says: "Society always retains its right to socially isolate the dangerous, whatever may be the degree of their irresponsibility, on condition to combine that right with the duty to assist and medically treat the criminal."

Again, he says that society has a right to guarantee itself against the irresponsible but "elle ne doit pas le *détenir* dans une prison, mais

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<sup>1</sup>Of the Philadelphia bar.

elle doit le *retenir* dans un asile special." He repudiates the theory of "punishment" as unjust and inefficacious. At about the same time there appeared "L'évolution scientifique du Droit pénal," by Dr. Legrain, consisting of his lecture course as a professor of the Law School of Paris. He declared that the term "limited responsibility" was without value, because indicating a condition not capable of measurement. Said he: "Il faut l' avouer. La mesure de la responsabilité est un problème qui nous échappe. Caché dans la conscience humaine, il est insoluble pour la science positive." He then attacked the traditional theory of "punishment," but without proposing any comprehensive plan for reconstructing the manner in which society may justly protect itself. It is in a review of this work published in *La Revue* of August 1, 1907, and written by Emile Faguet, of the French Academy, that the true modern doctrine is first given light in unreserved terms and in complete repudiation of the time-worn theory that takes us back to the stone age. He says: "It is not at the point of view of culpability that one must place himself. That is too obscure and too metaphysical. It is absolutely necessary to eliminate the point of view of culpability and consider only the standpoint of harmfulness. It is not necessary to consider criminals as responsables, demi-responsables, irresponsables—that is to say, as guilty, half-guilty or not guilty; that concerns only the philosophers. It is necessary to consider them as very dangerous, dangerous, semi-dangerous and not dangerous. Only that, and nothing else, should be considered. Considering that one never knows whether a man is responsible and guilty or not, nor in what measure he may be, one should reckon only the degree of danger to society he represents. . . . It is no longer a question of avenging or to punish, nor even of defending; it is a question of preserving oneself and of doing so according to the magnitude and imminence of the danger. Pity, clemency, indulgence, as well as horror, indignation, contempt or anger, are words that, here, have no longer any sense. Le magistrat construit une digue et viola tout. Il n'a ni colère ni pitié, ni sympathie ni antipathie contre le flot."

It was in this International Union of Penal Law that the first steps to realize the foregoing concrete proposition were taken. At the congress held in 1908 at Berlin E. Garçon, professor of criminal law and comparative penal legislation at the University of Paris, requested consideration of the question of "the necessity of maintaining the objective point of view in penal law in order to guarantee individual liberty." At the next congress, held in 1909 at Amsterdam, that question, after a limited discussion, was united to an inquiry proposed by Dr. Franz von Liszt, professor at the University of Berlin, as to whether the notion of

the "dangerous state" of the delinquent and treatment upon that basis would be warranted as a measure of social defense. It was at the meeting in 1910, consequently, that the discussion was upon this question: "In what cases, determined by law, may the notion of the dangerous state of the delinquent be substituted for that of the prosecuted offense, and under what conditions is the former compatible, as a measure of social defense, with the guarantees of individual liberty?"

The resolutions and reports upon the topic from the various national groups adopted earlier in the year were presented and constituted a valuable preliminary guide to the discussion in general assembly. This extended over several days and was participated in by such men as Prof. Garçon, Dr. von Liszt, Dr. Henry Jaspar, barrister, of Brussels; Dr. Visoin-Cornateano of Bucharest, the president of the union; Adolphe Prins, professor of penal law at the University of Brussels; Prof. Vladimir Nabokoff, of the University of St. Petersburg; Dr. D. O. Engelen, president of the tribunal at Zutphen, Holland; Dr. Aschaffenburg, medical professor at the University of Cologne; Prof. Silovic of Agram, Croatia; Dr. Eugen Kulischer, barrister of St. Petersburg; Dr. Paul Lublinsky, professor at the University of St. Petersburg, and Dr. J. H. Abendanon, director of the department of education and industry of the Dutch Indies at The Hague.

The most exact doctrinal address was made by Prof. von Liszt, whose theories were summarized as follows:

I. *The Dangerous State and the Measures of Social Defense in General.*

1. *The Dangerous state* exists when it is necessary to conclude from the special intellectual nature of a certain individual that he cannot be prevented from committing crimes by the threat and execution of the ordinary penalties. The dangerous state may exist even when the individual has not yet committed any wrongful act.
2. *The measure of social defense* may be either measures of adaptation or measures of elimination. The first aim to adapt the individual to the social life; the second, to eliminate him from it. The former must, though not attaining the object sought, end at a certain fixed time; the latter must last so long as the dangerous state exists.
3. *Individual liberty* is not endangered by the taking of measures for social defense if legislation fixes the conditions that must be realized in order to admit the existence of the dangerous state; and whether the moment when those conditions are to become operative or should end are to be left to a judge to fix,

and, if so, whether temporarily or definitely. In case the existence of a dangerous state depends upon the commission of an offense, the necessary steps must be taken by the penal judge on the basis of the penal code and pursuant to a criminal trial, in which case the measure of social defense may be applied in place of the penalty due or as accessory thereto.

II. *Measures of Adaptation in Regard to Criminals.*

1. As to *young delinquents*, and while educational means seem necessary to adapt them to the exigencies of social life, all measures should be taken under the surveillance of the state. They should in all cases end with civil majority.
2. As to *delinquents marked by general bad conduct and idleness*, it is necessary to order seclusion in a workhouse if such seems required and proper in order to instil the habit of regular work. The seclusion should not exceed the maximum fixed by the law.
3. As to *drunkards*, they should be secluded in asylums for inebriates if such appears to promise their cure. The seclusion should not exceed the legal maximum.

III. *Measures of Elimination in Regard to Criminals.*

1. The *insane delinquent* acquitted for lack of imputable guilt should be committed to a special establishment, if his state is decided to be dangerous, and he should remain so long as that state lasts.
2. The same rule and same conditions apply to the delinquent whose penalty has been modified by reason of extenuated imputability of guilt.
3. The *same delinquent* who appears to be dangerous because of reiterated and grave relapses into crime must be secluded so long as the dangerous state lasts. Secondly should be considered whether he will be sent to a penitentiary or a special establishment. On the other hand, any attempt to fix a definite period of confinement should be absolutely rejected.

The final resolution, adopted unanimously by the union, was as follows:

"The law should establish special measures of social security against delinquents who are dangerous because of either their legal relapses, their habits of life such as the law may define as dangerous, or their antecedents, hereditary or personal, manifested by a crime or offense that the law shall determine."

## INTERNATIONAL UNION OF PENAL LAW

The executive committee was entrusted with the duty of preparing a definite mode of accomplishing the purpose, for discussion at the next annual meeting.

Among the instructive reports on this topic sent in from the various national groups were those from Egypt, prepared by Aly Aboul Fetouh Bey of Cairo, governor of the Province of Guirgued, from Russia, prepared by Prof. Vladimir Nabokoff, of the University of St. Petersburg, and from Brazil, prepared by the distinguished barrister and professor, Dr. Joao Vieira de Araújo, and containing also a valuable criminal law bibliography of his country. The congress was also enlightened by two papers on the "Psychology of Testimony" by Prof. Claparede and Dr. Georges Werner, both of Geneva. The subject of regulating international extradition received some consideration, but no systematic discussion. Announcement is made of the formation of a Roumanian group and an American group during 1910. The latter refers to the action taken in Washington, D. C., in October last, when the American Institute of Criminal Law and Criminology held its annual meeting in conjunction with the International Penitentiary Congress. The Institute is recognized as the committee-agent or unit in the United States constituting the "American group" of the union. Prof. Charles R. Henderson, of the University of Chicago, was elected president and Mr. Harry E. Smoot of 31 West Lake street, Chicago, Ill., secretary. Among those who participated in the organization were Prof. Adolphe Prins, president of the international body; Dean Wigmore, of the Northwestern University; Prof. J. W. Garner, editor of this JOURNAL; Prof. Edwin S. Keedy, of the Northwestern University, and Prof. W. O. Hart of New Orleans.