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Reviews and Criticisms

FESTCHRIFT FÜR KARL BINDING. Zum 4, Juni 1911. By *many hands.* Erster Band. Verlag von Wilhelm Englemann, Leipzig, 1911. Pp. 521. (Continued from last issue.)

ATTEMPTS IN THE PRELIMINARY DRAFT OF A GERMAN CRIMINAL CODE. By *August Finger.* Pp. 259-330.

Binding made a notable contribution to legal sciene in his "Norms and their Transgression" in discovering that these norms which in form are always commands or prohibitions, are divisible into three classes according to the kind of objects sought and the manner of seeking them: Prohibitions against injuries, prohibitions against dangers [to rights] (classified also under the larger grouping of effectuating prohibitions), and simple prohibitions; corresponding to effectuating commands, promotive commands, and simple commands.

In effectuating prohibitions (*Bewirkungsverboten*) the norm interdicts a distinct consequence definitely pointed out. All acts are forbidden which accomplish a certain result. Prohibitions of action (*Tatigkeitsverboten*) proscribe definite acts. Effectuating prohibitions accordingly are broader in scope. They relate not to the specific method of acting, the means, but to the effect of action. For example, no legislation could undertake to set out all the methods of killing. It must limit itself to the result; no other form of statement technically is possible.

Prohibitions against injury are supplemented by prohibitions against dangers, and prohibitions of action. Acts which, measured by the test of prohibitions against injury, have only a partial operation, fall under both of the other groups. An act in hand which would contravene a prohibition against injury may be considered under prohibitions against dangers or prohibitions against action. The statutes, however, go a step further, and generally forbid attempts to transgress an effectuating prohibition. The Swedish Criminal Code is mentioned as an exception.

There is raised here a question which is at once fundamental and technical. The legislator must clearly distinguish whether an attempt is to be differently treated than an accomplished act. If this proposition is denied then no special treatment of attempts is necessary. If he consents to it, then it will appear that legislative treatment may take on different forms. The form of legislative statement may be so broad that it may include within its reach the simplest attempts and the most aggravated completed acts. This method of solution will be considered undesirable by those who believe that a criminal statute should not be subjected to the wide range of social, political, and religious influence which may play upon the judicial judgment. If attempts are to be specially limited then this may be done either in the special part of the code treating of specific offenses, or there may be a unified treatment of the subject in the general part. This is purely a technical question. The only problem is as to the method,

with a view of alleviating the difficulties of legislative statement. If there is otherwise no choice, the preferable method would seem to be a complete formulation of attempts in the general part of the code, instead of detailed treatment in the special part. There is also the much controverted question, whether an attempt should be punished as severely as a completed act.

The detail of this essay deals with attempts in present German law, and according to the preliminary draft of the Criminal Code. The whole article seems worthy of translation, and there is much in it of pure scientific interest in a department of criminal law which has for us had little if any scientific consideration. No other trunk of criminal law, it may also be stated, has had a more interesting or curious growth than this.

LAW IN POLITICALLY UNORGANIZED PLACES. By *Rudolf Stammler.* Pp. 331-373.

This is a study of law, or its substitute, under Robinson Crusoe conditions based on a literary theme suggested by Jules Verne's "Children of Captain Grant." There have always been large stretches of earth where the external trappings of law were not to be found. Hoffman, in his "Devil of the Sands," in describing the imaginary situs of his story even mentions the advantage to such places of not having judges and lawyers. The practical possibilities of these situations have been brought conspicuously to notice by recent developments in aviation. Apparently there may be cases where external order and restraint are required, but where law does not exist. Stammler denies this and asserts the unlimited dominion of law.

Law and state are not systematically similar ideas. Law is a formal condition of human will. It has the attribute of positing ends. The state, on the contrary, can only be thought of as applying the legal concept; without this concept, the state is impossible. In fact, the term "state" is a somewhat recent invention. Loening has shown in his handbook that Germanic as well as Roman usage did not employ it. The same writer has further shown that a technical distinction between "state" and "Stadt" (self-governing city) arose slowly, and that it was not until after the 16th century that a precise meaning attached to the terms *stato* and *etat.*

There is a three-fold order of thought here: First, the idea of law, then legal order, and finally the state. The idea of law is a universally valid and formal process by which ends of action are set up. This is an abstract notion, and it does not come into historical being apart from a special content of ends which are called, concretely, laws. The notion of state is an after idea and is not only dependent on legal order, but presupposes it; but it involves an added element of a definite territorial domain.

Naturally, Stammler's thesis brings him to the consideration of the "Law of Nature"—that condition of things anterior to the state, which has been always a favorite subject with the older schools of legal philosophy. Stammler asserts that the theory of a "natural condition" is only a preliminary thought; it isolates the individual;

but there is yet present the external relation of the individual to others. The mind seeks unity, and there is presented to it the idea of necessity. There is no such thing as an unrestrained "natural freedom"; there must be order in the manifestations of human will.

Before he gets very far, the author walks upon and exhorts from an old platform, the planks of which have become quite familiar to the jurist through the work *Richtiges Recht*. Without an appreciably close connection with the points already discussed, Stammler explains the notion of the obligatory will, the will that binds men together in a common effort (as Marx has expressed it) in the struggle for existence. The individual as a part of the community must participate in the social will directed to social ends. Absolute necessity is not to be thought of here in speaking of the necessity of the common will. Teleological necessity, the necessity of unity and order, stand in the place af causal necessity.

Admitting as proved, the necessity of legal regulation in politically unorganized places, a further difficulty is encountered as to the content of this regulation. All sorts of difficulties may readily be imagined in applying domiciliary law, or law having an extra-territorial operation. Three preliminary solutions are presented: to remit the controversy to the domicile; to draw the law of the domicile to the forum; or to allow all existing systems to operate at one time. Neither of these contingencies affords a solution. The country without a political organization must furnish its own law. The content of this law will depend on an infinite variety of conditions. History gives several well authenticated examples of the self-generative force of law in situations such as those under consideration.

The essay concludes with a statement of the world character of law. The formal concept itself is one of unlimited extent, but the material nature of law is historical and dependent on time and place.

CRIMINAL ATTEMPTS AND THE DRAFT CRIMINAL CODE. By *August Schoetensack*. Pp. 376-434.

Knowledge of legal injuries resulting from certain acts and omissions compels the establishment of commands and prohibitions. If these rules stand independent of legislative motive they are ineffectual to produce the maximum of obedience, or to ward off the dangers at which they aim. Norms which have a general application to the affairs of life have a hypothetical character, but their general and hypothetical nature should not take on an added intellectualistic meaning, since otherwise legal rules would become like the finalities of natural laws. We must avoid the paralogism which identifies the propositions of logic with legal norms, as well as the error which assumes that hypothetical rules necessarily issue in hypothetical judgments. Rules of law remain genuine imperatives even in the forum of logic.

The mind is not a copy of reality, and the norm of attempts must contain a subjective factor. It cannot prescribe, "You shall not cause such a result," but it must command, "You shall not do that which you may know will cause such a result." There is met a kind of interpretation of norms which leads to purely subjective consequences.

Thus, Lammasch says that the illegality of an act is to be judged by the perception of casuality of the actor, and not by the result of the act. This view needs the bridle of an objective standard.

Regarding the concept of result as a logical-teleological idea, two possible methods of consideration are presented—the synthetical, and the analytical (after Swigart). The writer adopts the latter. The starting-point is an illegal result in the sense of an objective completed act or an attempt. If the result is admitted, then the inquiry leads to the question whether the subjective norm has been overstepped. The writer criticises Finger's theory of attempts, and believes that as formulated it cannot stand without the additions made in the thesis.

The first part of the present essay deals with the general theory and analysis of delictual attempts, and the second division treats in some detail the draft code in the light of the author's views. The second part contains also a useful list of punishable and non-punishable misdemeanor attempts. The theoretical part is a valuable contribution and would be useful in translation for general legal science.

DUELING IN SWISS CRIMINAL LAW. By *Alfred Freiherrn von Overbeck.* Pp. 437-457.

This is a faithful account of the legislative situation in Switzerland, past and present, covering dueling. Two principal Cantonal groups are noticed, in one of which no legislative enactments are found, and in the other of which there are special statuatory provisions treating dueling in a variety of ways as a special offense. Full references are given to the sources, both of legislation and of commentary. The author makes no effort to deal with dueling any further than to state the bare legal situation as it has existed and as it now exists. The Code, of course, follows the lead of Germany in prescribing penalties under various conditions.

Dueling, it would seem, is rapidly approaching the stage of disuse when it will be regarded everywhere in the same way as the primitive trials by ordeal. In our own geographical position this institution has already passed into the realm of the historical, and there is little in this essay that is of primary legal interest to us. In those countries where dueling is still recognized by the state, either overtly or by the process of dead-letter, the ethical sense of honor, and a residuum of the savage in every man, perhaps, still approve the charge of the Irish judge to the jury in a death case, when he said. "You are instructed that according to law this is murder, but for my part I never met a fairer duel in my whole life."

ORIGIN AND MEANING OF THE SOCIOLOGICAL SCHOOL OF CRIMINAL LAW. By *Xaver Gretener.* Pp. 461-521.

Within the last three decades two schools of thought have undertaken to open up new highways in criminalistic progress. One of these is the Anthropological which is associated with the name of Lombooso; the other is the Sociological, but it is less clear, so the writer thinks, who is to be credited as its founder. German literary

usage, so it is stated, makes a conventional opposition between the Anthropological or Italian school and the Sociological or von Lisztian school. Even the most severe critics of von Liszt have acknowledged him as the unquestioned leader and founder of the Sociological School.

The proposition advanced and argued in detail in the first division of this essay is that not von Liszt but Ferri has the claim of priority in the Sociological School of criminal law. The discussion is in the nature of a reply to an article published by Dr. Fritz Horn in the Austrian Journal of Criminal Law.

Ferri and von Liszt have in common a strong deterministic starting-point. In conformity with the Classical School, but in contrast to the "Third School" (Merkel, and Liepmann), both regard the problem of accountability in the strict sense as inseparably connected with the question of freedom of will. Thus the guilty will falls with freedom of the will. All that remains is the anti-social act and the socially dangerous author of the act. From these premises arises the necessity of a new basis of criminal science and criminal punishment. With the theoretical foundation of this necessity there is connected the practical consideration that against the increasing flood of crime and impotency of the law to erect effective dams against it, resort must be had to the causes of this phenomenon, by the methods reached in the field of the natural sciences. The first task is to investigate the factors of crime—*l'étude étiologique du délinquent*—which has been the platform of Italian Positivism for the last generation.

The characteristic ideas and the points of agreement between Ferri and von Liszt are in the following specific positions of the Sociological School:

1. Ferri classifies three groups of crime factors which von Liszt adopted in his *Lehrbuch.*

2. According to Ferri the social factors increase in importance with advancing civilization *sans prétendre exclure par là l'action concomitante des facteurs biologiques et telluriques,* with which von Liszt accords.

3. Every act of man, according to Ferri, and therefore every crime, is the necessary product of his physical and psychical organization, and the natural and social atmosphere in which he is born. The language of von Liszt is strikingly similar.

4. The mission of sociological punishment, or more accurately social reaction, is war against the causes of crime.

5. In place of legal accountability as the material of criminal reaction there is substituted the anti-social impulse, the *temibilità del delinquente.*

6. In order to apply properly the instrument of social reaction, it is necessary to individualize crimes by regarding the bio-sociological classes of offenders.

7. The concept of atonement is put aside for the idea of adaptability—the classification of responsibles and irresponsibles is replaced by adaptables and unadaptables. When social adaptation is impossible, threats of punishment and penal execution have no motivating function.

8. The adaptable class is to be harmonized with the will of society by different varieties of punishment; the unadaptable class is to be excluded from the possibility of social danger. Punishment is reduced to the level of protection merely.

9. All admeasurements of punishment are to be abolished.

10. The parallel noted between the past treatment of insanity and the future treatment of crime shows the incompatability of the ideas of guilt and punishment with the views of the Sociological School.

11. The interests of public security are emphasized, but both writers are equally indefinite in their measures of security.

12. Criminal law is a science in the strict sense. It is a special department of general sociology and its departments are criminal anthropology and criminal statistics.

The vigor of a new attitude toward crime is clearly shown by an effort such as the one under review. If the question had not been raised, perhaps with such information as we already possessed, no doubt would have been entertained of Ferri's originality and priority, notwithstanding the value of the *atténuations eclectiques* of von Liszt.

The significance of the sociological thought in criminal law is now peculiarly of importance, and especially in Germany, where a completed draft of the Criminal Code is under consideration which represents the practical issue of a battle among the schools. While partial revisions will be necessary, particularly in the general part of the draft in the light of existing criticism, yet as a whole it will be and remain a prominent mark-stone in the history of modern criminal legislation. While von Liszt thinks that he sees in the draft the expression of the essentials of the school which he represents, yet von Birkmeyer takes the view that the basic ideas of the Sociological School are rejected. Again, Kollman says that in the draft "the absence of principle has itself been raised to a principle." To further illustrate the flexibility of opinion here, Sommer even thinks that Lombroso laid the foundations of both the German and Austrian draft codes. The writer finds that the specific claims of Lombroso and of the Sociological School have been ignored, and that upon the cardinal question lying at the basis of the controversy between the Schools, the draft asserts the proposition of accountability in the strict sense.

Yet while the draft retains the old views concerning crime and punishment (and to this extent, perhaps shows the hegemony of the Classical School) still it also shows the influence of the Sociological School in a variety of principles. The etiology of crime is recognized; the principle of security has made a distinct impression on the Austrian, Swiss, and German codes; individualization of treatment has had a limited reception; and the social background of crime is partially admitted by provisions for indemnification by the state of the persons injured by crime. The writer concludes that the authors of the draft codes have deserved well in defending these proposals in legislation against the basic ideas of the Sociological School in that

while adopting measures to humanize the criminal law they have also retained the notion of guilt and differences of guilt.

Apart from the controversial nature of this essay, it affords a valuable insight into the latest thought in criminal science. The characteristically thorough literary apparatus used is itself worthy of mention.

Chicago. ALBERT KOCOUREK.

IL PERICOLO DI OFFESA NELLA DIFESA LEGITTIMA, Estratto dal Suppl. alla *Rivista Penale,* vol. XX, fasc. III. Per *Giulio Battaglini,* Pp. 29.

This is an article by Prof. Battaglini on the "Danger of Offense in Self Defense." As usual with Prof. Battaglini the discussion is based upon wide and deep learning, and is illumined by an acute intelligence.

Legitimate self defense is one of the most interesting divisions of the penal law. Self defense will never be expunged from the code. It will disappear only when social disharmony has disappeared. When crime shall have been abolished and shall be a devil's dream, self defense will no longer be needed. There are two sorts of defense: one by the state, and the other by the individual. A prime function of the state is to maintain order, and, by implication, to suppress crime. But the state cannot always be present at the commission of crime, and so it becomes necessary for the benefit of social order itself that the state should allow the individual to do what it cannot perform. How disintegrating it would be to prevent a unit of society from doing for himself what the whole society itself cannot do for him. [Why should the aggressor be subjected to more punishment after the person attacked has acted against him? Because the state still retains the power to punish, and does not delegate it to the one attacked. The latter is no agent of the state to punish. The state recognizes the right and even the duty of a member of society to defend himself from attack, because the suppression of crime is for the advantage of the state, and because it would be futile for the state to order a person to abstain from self-preservation. The law is reasonable, and recognizes psychological impossibilities, as well as physical ones. Self defense is not a subjective right, but a juridical authorization.

By what is individual defense determined? Every being struggles for its own existence and every act that tends to batter down the conditions of its life is combatted with the fierceness born of the most intense feeling and the most driving instinct of nature. You may defend yourself against an imminent danger, or against an act that has already brought injury upon you. In the second case the state leaves you no alternative but conformity to the established procedure of law; what is past cannot be prevented, but can be rectified, or punished, or repaired. In the first case the state is powerless to aid you, and hence it gives you the right to aid yourself. The right of self defense is, therefore, based upon necessity; if the right be not exercised at the time, it cannot be exercised afterwards. According to the Italian code the aggressed person may attack only in

defense of life or limb, and not of honor, or of property, unless the attack upon property be connected with a danger to the person.

Contrary to some authorities the author maintains that defense can never consist in inaction. Defense is action.

In judging of the act of the aggressed person the court must put himself into the place of the former. The act must be looked at not in cold blood, but with all the concomitants, which excited the passion, and confused the mind. This gives a hint as to the point of view of the author in criminal law. It is the psychological point of view. We are not surprised, then, to see him cannonading the outworn yet ever living illogical position that an insane person and an infant incapable of understanding obligations are responsible for their acts. There is no such thing as objective responsibility, or objective blame. There is only subjective *culpa*, and responsibility, to which the sanctions of law attach. Recently in America the Committee on Insanity of the American Institute of Criminal Law and Criminology slaughtered this dragon of seemingly everlasting life. Prof. Battaglini is thoroughly alive to the baneful consequences of the theory. We must understand perfectly and once for all that punishment is not, and cannot, either logically or from humanitarian considerations, be meted out to incapables and incompetents; nor can imprisonment contemplated by the codes which is destined for competents be inflicted upon those who do not fall into this class. Whether one is a positivist or not, there can be no two views upon this point; the infant, recognized by law to be incapable of crime, and the insane must be segregated from society for the protection of society, but they must not be subjected to the same treatment as other offenders are.

A physician has been called to the bedside of a patient whose life is in danger. The driver of his vehicle stops in the road and refuses to proceed. Has the physician the right to point a pistol at the driver and threaten to shoot unless he proceeds? Does the definition which may be framed from the elements so far given include such a case? The author answers in the affirmative. Was not the act of the driver unjust? Was it not violent? And may I not oppose violence to violence to protect life or limb? The rightness of the answer depends, of course, upon the definition of violence. Did the driver commit violence by standing still and refusing to go on? There is no doubt that the law should provide for such cases.

New York City. ROBERT FERRARI.

SUL FONDAMENTO GIURIDICO DELLA QUERELA PRIVATA. Dell' avv. *Giulio Q. Battaglini.* Estratto dalla *Rivista di Diritto e Procedura Penale.* Anno II. Fasc. 3 1911. Pp. 15.

The juridical foundation of private accusation is the theme of the pamphlet before us. The work is an analysis of the philosophy and the psychology of the law of accusation, public and private, and a comparative study of the subject. The author distinguishes between the criminal procedure of England and America, and that of Italy and other European countries. In England and America the mode of procedure in accusation is, with one exception—the common as-

sault—uniform; it is entirely public, that is, instituted by the people. and not by a private complainant. The prosecutor is the state, and not a private person. But in Italy there are two sources of prosecution: one the state, and the other, private parties. There have been many theories concerning the principle underlying the institution of prosecution by the community and by the individual. But the true principle seems to be that expounded by the author. There are certain acts which, although they are declared to be worthy of punishment, do not provoke general resentment and indignation; and there are others that do. There are interests which are immediately private, and interests which are immediately public. (See my summary in this Journal of an article by Prof. Battaglini, September, 1911.) Acts which touch the public interest more immediately are prosecuted by the state; acts which touch more immediately private interests are prosecuted by individuals. So it happens that some acts of the latter kind, although they are prohibited by the code, go unpunished, because in the absence of a complaint by the person injured by an act, no one has a right to play informer or prosecutor. Of such a sort are certain thefts between members of a family. It is better in these cases that the veil be kept tight than that it be drawn aside. Society itself will be the gainer by such procedure. But acts, like assaults with a deadly weapon, are acts in which the public is eminently and intimately concerned, and may, therefore, be complained of by the representative of the state.

Law should reflect the state of civilization of a people; and social utility should be the touchstone of just law. The author believes that if the preceding two propositions are true the times need not a narrowing of the field of private accusation, but a widening of it.

New York City. ROBERT FERRARI.

IL TITOLO PER LA CONSTITUZIONE DI PARTE CIVILE, IN ESPECIE IN RAPPORTO AI SINDICATE PROFESSIONALI. Per *Gennaro Escobedo*, Societa Tipografica; Turin. Pp. 94.

In this treatise *Escobedo* deals with the question of allowing interested parties to take part in criminal prosecutions, with the view to the solution of the problem in its subdivision regarding the right of professions, trades, or eleemosynary institutes to take part in the punishment of those whose acts contravene their tenets. He takes up the practical and philosophical reform of law, in which the Italian mind both delights and excels. He desires to base his reforms on a solid foundation of fact, so that they may meet the exigencies and demands of life with certainty and without need of legal fiction or presumptions. New relations between men give rise to the need of new laws; and these laws should be determined by the new needs which they are aimed to meet, the new law should be based on the necessity of things and not be patches on old juridical principles. Such additions, for the purpose of meeting new requirements, are generally not in accord with the principles of the norm to which they are superadded, and do not generally go deep enough to satisfy the new need. Hence they fail in their purpose, and give rise to doubts, fictions,

and presumptions, which should have no place in any legal system. Every legal system should be accurately fitted to the facts of the life of the people, whose freedom it is made to protect. In speaking of a French statute, which extended a section of the code covering an individual right to corporations, and which failed in its purpose because the criminal code required a proof of direct damage, which, as was shown, was suffered by the members of the corporation, not the corporation itself, Escobedo writes (page 9): "This new provision is not in accord with the juridical principles which had governed the situation. Hence an inevitable uncertainty of interpretation, which should lead jurists to study closely whether the juridical principle, with which the statute, required by the needs of life, seem to conflict, is true and exact."

This, he thinks, is the most usual fault, from which nothing but confusion results (page 9):

"Nor could it be otherwise. When confronted with the signs of some new need in life, legislators usually do not, in their efforts to meet it by statute, proceed on general and rational principles, but endeavor above everything else to give a remedy or make provision for the new circumstances."

What is needed in every reform, the object of which is the satisfaction of a need, created by historical evolution, not theretofore nonexistent, is that the new circumstances be first studied from every point of view, principles by which it is governed determined, and its norm found. This should then be worked into the legal system in the form of a statute and every mediate, as well as immediate effect on other statutes should be examined so that no incongruities be left. For, every incongruity, doubt or legal fiction is the work of loose juridical reasoning or of an attempt to govern one fact by the norm of another because they have a superficial resemblance. We may add that more often than not it will be found that the ancient principles of law are correct and are readily adaptable to new needs. The error lies generally in the effort to govern the relations arising from one set of facts by a statute made to fit by a series of fictions—a legal short-cut leading, as the ramifications are followed to their necessary ends, into inevitable blind-alleys.

But, to return to our special subject, Escobedo applies these principles to participation in criminal prosecutions with a view to determining to whom this right belongs, and how the new need of modern life for the protection of good faith in certain trades, for the maintenance of responsibility in certain professions and for the requirement of certain charities to children and animals may be assured by allowing the trades, professions, and charitable organization to form a *parte civile* in prosecution for contraventions of such acts. To determine these latter questions, the problem of the *parte civile* in general must first be determined, then that of its availability by representatives. As the *parte civile* is an institution unknown to common law, Escobedo's solution of its difficulties is of little interest to English readers—Sufficeth to say, that civil law allows the victim of a crime to become a civil party in a criminal action for

the purpose, as it is generally held, of obtaining compensation in damages. Escobedo sees that this definition prevents the bar, the medical profession, to say nothing of trades, whose membership is in no wise restricted, and of such eleemosynary societies as those for the prevention of cruelty to children or animals, from taking part in the prosecution of a lawyer or doctor for unprofessional practices, or for practicing without a license for acts of dishonesty or cruelty. The entity can allege no pecuniary damage. This admitted defect, due to a need caused by modern social development, which did not exist in the XVIII century, cannot be cured by simply giving the entities the right to appear as *parte civile,* as the French attempted to do, for they cannot meet the requirements. By applying the general principles, which we have elucidated, he would alter the prerequisites of a *parte civile* allowing the proof of even any legal damages, whether pecuniary or not. And, as this is not sufficient, for we have seen the entities suffer *no* legal damage, and by a study of the right of representation we can see that an entity is distinct from its components, with distinct interests, and that it, as such, is no legal damage by fraudulent competition, we must give them the right to appear as *civil parte* for political injury for them. This they suffer by the discredit put upon them by fraud committed by their members or others.

Without going into his detailed arguments, we will give his conclusions.

(a) The old rule concerning the *parte civile* shall remain in force. No attempt should be made to extend it to persons, corporations, or entities in needs arisen since its formulization and fundamentally dissimilar to those which gave rise to it. The superficial similarity of the need of intervention in criminal prosecution should not be aided by legal fictions for the purpose of permitting intervention as a *parte civile,* in cases where none of the prerequisites of the institution can be found.

(b) Anyone who has had a legal right infringed by a crime. can become a private party to the prosecution, although he cannot allege pecuniary damages.

(c) If the crime has caused the death of the victim, his right as a *parte civile* may be represented by any relations to whom he owed a duty of support, or him in whom such duty has devolved. Damages for the loss may be recovered by surviving wife, husband, lineal descendant or heir in the order of succession.

(d) If the victim of the crime dies independently of it, his right as *parte civile* forms part of his estate.

(e) In case of incapacity, he may be represented as above.

(f) Without injury to any legal right, the following persons may become private parties to assist the public prosecution:

(1) Entities legally formed for the protection of professional public ends.

(2) The condemned (or his legal representative), whose sentence was reversed by a higher court, in a prosecution for crime for which he was condemned.

(3) The defendant in any action for slander or libel in a prosecution against the plaintiff for the crime alleged.

A comparison of this theory for meeting the needs of modern society with the French statutory reforms, of which we have already spoken, will make clear at a glance the advantages of Escobedo's practical philosophy of law. It is his method of dealing with the question and not the question itself which is of most interest to the American lawyer and sociologist, for it seems absurd, if not inethical, to the American mind, to allow, for example, the widow of a murdered man to become a party to the prosecution for murder with the object of recovering damages for her husband's death. But his method of taking the new combination of facts and by the application of admittedly valid general principles to it, deriving new norms to govern it is clearly superior to the old method of extending rights by statute and creating presumptions by judicial proceeding. It is not only scientific and accurate in the first instance, but it does not lead into positions from which no power of logic can extract us without humiliating self-contradiction. But, apart from this, his project of allowing the bar and medical profession (as well as certain trades) to become a party in criminal proceeding for the punishment of crimes, which affect their moral standing in the community might well be adopted in the United States.

But, to return to the treatise, we have nothing but praise for *Il titolo ti per la costituzione di parte civile in especie in rapporto ai sindicati professionali.* It is clearly and interestingly written. It is philosophical, practical and complete. One cannot say too much in praise of it.

Philadelphia. JOHN LISLE.