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Editorial

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EDITORIAL

THE PROGRESS OF PENAL LAW IN THE UNITED STATES OF AMERICA, 1874-1924

Fifty years ago was founded in Italy the "Rivista Penale," by the eminent jurist Lucchini. Fifteen years ago was founded in the United States the "Journal of the American Institute of Criminal Law and Criminology," by a Committee of that Institute. The youthful American journal salutes its venerable predecessor, congratulates it upon the flourishing intellectual and scientific life of its past fifty years, and acknowledges the debt which America owes to Italy for the profound inspiration and the world-wide influence emanating from that country in this important field, Penal Law.

By the remarkable processes of cosmic evolution, it has been Italy's destiny for a thousand years always to lead the world in that field. And this initiative has been seen alike in the practical as well as the theoretical, the radical as well as the conservative, aspects of the state's organized struggle to suppress the great human trait which we call crime. When all European jurisdictions were helplessly persisting under the outworn Germanic methods of criminal procedure, Italian jurists devised the great method of "ex officio" inquisitional prosecution, which gradually spread all over the civilized world, and recently even to England, the last stronghold of the ancient system of private prosecution. Later, when the subjective discretion of the criminal judge was operating arbitrarily to determine the proofs of guilt or innocence, Italian jurists devised the helpful method of "legal proofs," which dominated Europe for five centuries. Still later, when the practice of trial and punishment had again developed intolerable abuses, Beccaria awakened Europe to the need of a thoughtful reform. And in modern times, when the spread of scientific knowledge had revealed the wide aspects of criminal repression, and broader theories of crime were seen to be involved, it was Italy which put forth the anthropological and the social theories that forced the world to reconsider the whole subject. And now, after fifty years of debate and reflection it has been Italy that has proceeded to formulate the issues practically, by proposing a Penal Code which should represent concretely the accepted results of these new theories.

In all these periods, the arena of debate in Italy has been amply filled by able representatives of all schools of thought. Neither radical nor conservative, neither orthodox nor heterodox have been given complete sway in professional opinion. And the "Rivista Penale" has served as a just bulwark against acceptance of premature hypotheses and incomplete generalizations while at the same time exhibiting an open mind to all liberal thought. The applause of all criminalists will be accorded to the founders and the perpetuators of the "Rivista Penale," for its courage, its faith, and its brilliant contributions through these fifty years.

In the United States the inspiration of Italy's criminalists was strongly influential in the founding of the "Journal of the Institute," in 1909. That journal was then, and still is, the only journal of its kind in the English language; and it now circulates all over the world, from Chicago to Stockholm, to Calcutta, to Peking. And yet in Italy, in 1909, there were already a dozen journals of criminal science! And when the American Institute, also in 1909, lamenting the lack of acquaintance in America with the modern works on criminal science published in all European continental languages, organized a series of translations into English, entitled "The Modern Criminal Science Series," in nine volumes, three of the nine volumes thus selected for translation were by Italian authors!

Since 1909, the expansion of thought in this field in the United States has been enormous. To describe here the various details of that progress would be out of place. Suffice it to say that, as in every country, circumstances have given to it special local emphasis for the time being.

In the branch of technical procedure in general (gindizario?), there has been little or no organized thought among American jurists. This is lamentable; though it has its natural explanation in many circumstances too numerous to describe. But in the special branch of juvenile courts and procedure, there is an extensive literature and great practical progress.

In the branch of the psychiatry of crime, the American field is crowded with materials of thought, chiefly by the psychologists and based on experimental studies. Here, too, it is the psychology of the juvenile that has been given most attention.

In the branch of sociology of crime, there is also an equal emphasis in the extent of research. Owing to the well-endowed charitable foun-

ditions, which support many forms of practical sociological measures, the element of crime has become a natural subject for these practical sociologists.

In the field of prison science, there has been much practical experimentation with advanced methods. But the results of these experiments are not yet universally accepted as convincing; and the need is felt for a more accurate and extensive knowledge of the facts. Hence, until the facts can be verified, the theoretical discussions are languishing. Meanwhile, the economic aspects of prison labor present a problem which obstructs further progress in that field, and this is now being slowly solved.

In the anthropological or biological field, virtually nothing is being done in the special branch emphasized by Lombroso's ingenious theories of somatology. But the eugenical aspect is now being extensively discussed. A vast scientific and popular interest in eugenical science has been awakened. The practical measure of sterilization, and the probative possibilities of blood-analysis, are merely two concrete aspects of this. It is the broad possibilities of crime prevention by the segregation of cacogenics which are causing the widest study of eugenical science as a whole.

In the theory of penal law, nothing is being done; and this fact is lamentable. The vast growth of state regulation of industry has been accompanied by the creation of thousands of new penal offenses defined in the law. These do not naturally fit into the old categories, which indeed never were scientific. Hence, our penal definitions represent a conglomerate chaos of prohibitions, devoid of any consistent theories or generalizations. The correlation, which the penal law ought to have, with penal procedure on the one hand, and primitive methods on the other hand, is thus impossible. The outlook for early progress in this branch is gloomy.

Finally, in the field of police organization and methods, some progress is making practically, but nothing is yet done in scientific treatment. Such works as Niceforo's and Gross's are totally lacking in America. The bookstalls are full of hundreds of volumes of fiction, "detective stories," but the science of detection is neglected.

In this hasty and inadequate survey, it is obvious that American science has much yet to strive for. But amidst our aspirations to make more worthy contributions to the great world-science of penal repression, we acknowledge constantly our deep obligation to the brilliant

example of Italian jurists, and particularly to the noble career of the "Rivista Penale."

ROBERT H. GAULT,
Present Editor of the Journal of the Institute.

JAMES W. GARNER,
First Editor of the Journal.

EDWIN R. KEEDY,
Present President of the Institute.

JOHN H. WIGMORE,
First President of the Institute.