

1926

## Editorial

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## EDITORIAL

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### AMERICAN SOCIETY OF MILITARY LAW

The following gratifying communication has been received from Mr. Malvern E. Schultz, member of the Bar, Cleveland, Ohio. [Ed.]

At a meeting of the American Society of Military Law, which was held at Detroit, Mich., on September 23rd, 1925, the following officers were elected:

PRESIDENT: Col. Hubert J. Turney, Cleveland, Ohio.

VICE PRESIDENTS:

First Corps Area: Lieut. Col. William F. Alcorn, 185 Church St., New Haven, Conn.

Second Corps Area: Major Harry F. Besosa, San Juan, P. R.

Third Corps Area: Lieut. Col. Jasper Y. Brinton, Court Mixed Appeals, Alexandria, Egypt.

Fourth Corps Area: Lieut. Col. Barry Wright, Broad St., Rose, Ga.

Fifth Corps Area: Capt. Malvern E. Schultz, Cleveland, Ohio.

Sixth Corps Area: Lieut. Col. Wade Millis, Detroit, Mich.

Seventh Corps Area: Col. John S. Dean, Topeka, Kansas.

Eighth Corps Area: Major Chas. R. Loomis, El Paso, Texas.

Ninth Corps Area: Lieut. Col. Andrew J. Copp, Jr., Los Angeles, Cal.

SECRETARY AND TREASURER: Capt. J. H. Payne, Louisville, Ky.

EXECUTIVE COMMITTEE: Chairman, General Nathan William MacChesney, Lieut. Colonel Walter C. Clephane, Major John P. Sanborn.

By this meeting it is intended to revive the American Society of Military Law in such a way as to give a continuity of the work which it has done with the assistance and advantage of the Journal of Criminal Law and Criminology.

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### ERRATUM

The undersigned is responsible for an error in re the official status of Arthur H. Schwartz, who contributed an article to our last number. I inserted a footnote saying that Mr. Schwartz is "Professor of Law in Columbia University." It should have run: "Editor-in-Chief of the Columbia Law Review."

ROBERT H. GAULT.

### THE 1926 INTERNATIONAL CONGRESS OF PENAL LAW

At Brussels, May 13 to 17, 1926, will take place an International Congress of Penal Law. This Congress has been called by the newly formed International Association of Penal Law. The organization and official personnel of that Association were fully described in the February, 1925, number of the Journal; and this is the first Congress to be called by the Association.

There are now nearly 100 American members of the American branch; and it is hoped that a representative number from this country will attend the Congress.

The American Institute of Criminal Law and Criminology is the affiliated organization for this country in the International Association; and all arrangements for attendance and papers should be made through the Secretary of the Institute, Harry LeRoy Jones, Esq., 105 South La Salle Street, Chicago. The Secretary-General of the International Association is Prof. J. A. Roux, 7a Rue Stoeber, Strasbourg, France.

The program for the Congress contains four topics:

I. "The legislative trend in penal law, with a brief summary of measures enacted or proposed since 1900 A. D., noting particularly how far the principle of social defense has been accepted, and has replaced the classic ideas of criminal responsibility."

II. "Should the principle of social safety (as advocated by the Positivist School of Criminology) be applied so as to replace all penalties founded on the traditional idea of criminal responsibility, or should it be applied only to supplement the traditional method for certain kinds of criminals and in certain cases?"

III. "Should recognition be given to out-door work for convicts, and if yes, how can it be regulated?"

IV. "Is there any ground for establishing an international jurisdiction over crimes, and if yes, how should it be organized?"

Nominally, by the rules for the Congress, there may be but one paper on each of these topics from each country having an affiliated membership. But in the case of a large federated nation like the United States, having many independent criminal jurisdictions, it is understood that this rule will not be binding.

It is requested that persons expecting to attend and contribute a paper will notify the Secretary of the Institute, Mr. Jones, before the end of December, giving a full abstract of the contents of the paper.

If the notice is seasonable, the abstract will be forwarded to the Secretary of the Association for printing and distribution before the date of the Congress.

Further details of the Congress will be published in the February, 1926, number of the JOURNAL, and will be sent personally, at an earlier date, to all Americans filing their names and addresses with the Secretary in Chicago.

JOHN H. WIGMORE,  
American Member of the General Board  
of Councillors.

31 West Lake Street, Chicago.

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#### THE RELATION BETWEEN CRIMINAL LAW AND CRIMINAL PSYCHIATRY

It is evident, in recent literature, that there is an extensive gap between the standpoints of medico-social psychiatry, and of law, in relation to the problems of crime. The law has hitherto employed a conventional terminology which for centuries sufficed. Other branches of science have now approached the crime problem, each one of them apparently attempting to consider crime from its own point of view as the subject of remedy or repression. In recent years, these points of view have been dimly seen to be destined to lead to more or less conflicting conclusions and results. Meantime one or two of the new sciences have progressed in their terminology, so that it has become fairly complete. An illustration of this is the following definition of crime, taken from a recent number of a publication by a society for national hygiene:

“And, finally, on the basis of medico-social criteria analyzed, it appears that, in most cases crime (as concluded by so many other workers), is definitely not a specific legal, psychiatric, or social entity, static and unorganic, but rather a reaction or manifestation, dynamic and vital, in, of, and on the societal mass, representing, so to speak, merely a pattern shift and one always highly potential, in the kaleidoscope of broad individuo-social handicap, hardship, and maladjustment, and, in corollary, clearly demonstrating that all prophylactic and remedial endeavor must be conceived and directed from this point of view.”

As to this definition, all that we care to say at present is that we do not understand it, and that a definition which cannot be understood is futile.

JOHN H. WIGMORE.

THE NATIONAL CRIME COMMISSION: WHAT WILL IT  
ACHIEVE?

On Monday, November 16, 1925, was announced in the press dispatches the personnel of the Executive Committee of the National Crime Commission, whose chairman, F. Trubee Davison, Esq., of New York City, was appointed in the summer by President Coolidge.

This Executive Committee, as thus far composed, is as follows: E. A. Alderman, of Charlottesville, Va., president of the University of Virginia;

Newton D. Baker, of Cleveland, former secretary of War;

RICHARD WASHBURN CHILD, of Philadelphia, former ambassador to Italy;

Mrs. Ethel Roosevelt Derby, of New York;

Hugh Frayne, of New York, American Federation of Labor;

HERBERT S. HADLEY, of St. Louis, chancellor of Washington University;

Charles Evans Hughes, of New York, former justice of the Federal Supreme Court;

Frank O. Lowden, of Chicago, former governor of Illinois;

Franklin D. Roosevelt, of New York, former assistant secretary of the Navy;

Chester H. Rowell, of California, member of the State Railroad Commission;

And with them, *ex officio*:

Samuel McRoberts, of New York, treasurer of the Commission;

Charles H. Sabin, of New York, chairman of its finance committee.

Much will be expected of this Commission. It represents a conscientious, determined resolve to face the crime problem in its nationwide scope. And, as Abraham Lincoln once wrote to a young law student, "When you have *firmly resolved* to become a lawyer, you have already half succeeded."

In the personnel of the Executive Committee, three features are encouraging. In the first place, it is composed on a nation-wide basis, and not merely (as often happens with so-called national enterprises originating in New York City) on a Manhattan basis. Of the eleven non-financial members, one is from the South, one from the Southwest, two from the Middle West, and one from the Pacific Coast. In the second place, at least six are members of the legal profession. In the third place, all of the members are prominent in public affairs, with a record of ability and broadmindedness in their several spheres that commands confidence.

So far, so good. Now let us take account of the discouraging items.

2. In the first place, it is not yet a *crime* commission, in point of *expert knowledge*. The membership would do almost as well for a commission on any other progressive enterprise. When President Coolidge appointed a commission on the agricultural crisis, all the names were recognizable instantly as men of special experience in some aspect of the subject of agriculture.

Not so here. Only two (printed above in capitals) are known as having given any special study to the crime problem, and that only within a few years past. Only one of these two has had any special experience, i. e., as prosecuting attorney; he is really the only one that fully qualifies. In the repression of crime, at least a dozen branches of special experience are involved; and the American Institute of Criminal Law and Criminology has recognized this from the very start. These branches are: Prison officials, prosecuting attorneys, defending counsel, judges, police, psychiatrists, sociologists, probation officers, social workers, professors of criminal law, anthropologists, statisticians. No conclusions worth acting upon can emanate from a body which has not represented all these branches of special experience. On this Executive Committee, only one of them is represented.

Perhaps the Committee expects to call in various experts in these branches, as witnesses. But why not put the experts on the Committee itself? In all those branches there are able men and women, of national repute, and of executive ability, who could and should be used. To compose the Committee like an ordinary jury, of uninformed intelligent persons who will listen to the experts' testimony and draw what conclusions they can, does not seem to us the efficient basis for the Committee's organization. The way to reach worth-while conclusions is to bring together expert leaders in their several lines, get them to reconcile their very divergent views, and then present their conclusions as binding on the vast arm of opinion in each of these branches. *Then* we should have some results; hardly otherwise.

Another and related defect is that the various national organizations of persons working, each in some part of the crime field, are not represented. The press dispatches referred to some of the members as representing and selected by the American Federation of Labor and the American Legion. But what, in the name of Efficiency, have the A. F. of L. and the A. L. to do with crime experience? To get the backing of those bodies for a public measure, once framed, is one thing. But to find out how it should be framed in the light of experience is

quite a different thing. The National Prison Association, the National Prison Labor Committee, the National Association of Probation Officers, the Judicial Section of the American Bar Association, the National Association of Police Chiefs, the National Committee for Mental Hygiene, the American Institute of Criminal Law and Criminology, the National Conference of Juvenile Agencies, the National Eugenics Research Association, the Association of Attorneys-General, and several other organizations of the kind should be drawn upon. We could readily make up half a dozen rosters of a competent and eminent personnel of ten for a committee selected on this basis.

3. In the next place, we confess to doubts about this type of commission, however composed, being able to accomplish much practically. The reason is that it has *no power*. What is its status? It can recommend only. To whom? To the President, *and* to the "Peepul" of the United States. Will the Federal Congress pay any attention to the Commission's recommendations? Will the fifty independent State Legislatures pay any attention? Suppose that the Commission's conclusions were already formulated and had been published yesterday; would they amount practically to anything more than a pious wish, discussed in periodicals for a few weeks or months and then forgotten? National Commissions on problems lying within state constitutional powers are an anomaly and a novelty in our history; and our people are not accustomed to heed them. Some twenty years ago President Roosevelt appointed a national commission on the coal problem, which had been forced on public notice by a crucial strike. The commission made some wise but radical recommendations for a permanent solution of the problem; and its recommendations are essentially as valid today as then. What was done to execute them by the coal states? Nothing; and now another coal strike finds us just where we were twenty years ago.

So here. We see little hope of any practical results from such a commission on any national problem.

What way is there that might produce practical results?

A different organization. To get state results, in this federated nation, there must be state organization. A merely recommendatory, consultative national body will get nowhere, without an executive propagandist state machinery attached to it. There might be several methods—but here is one:

Let the Commission annex to its national core a representative body composed of: (1) The governor of each state; (2) the attorney-general of each state; (3) a selected representative of every national

expert organization of the sort described above. Let this body be called in from time to time, as each specific measure is drafted by the central committee, and be given an opportunity to debate it and to assent or dissent; let this assent or dissent be recorded. When the final conclusions are reached, let them be transmitted by the President of the United States to each governor and to each president of the unofficial organizations, with the request that the measures be presented at the next session of the State Legislature. Crime conditions are so widely different in different regions that each state will have to adapt these measures to its own conditions. Let the central committee continue in existence as a propaganda organization, pushing at the state officials, checking up on their results, notifying the public from time to time on the progress made or not made, and occasionally invoking again the stimulus (this means "good" in Latin) of a message from the President of the United States to the states concerned.

On some such method, we shall arrive somewhere. Otherwise, there is little hope.

JOHN H. WIGMORE.