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Salvador Mendoza

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# THE NEW MEXICAN SYSTEM OF CRIMINOLOGY

SALVADOR MENDOZA<sup>1</sup>

On the 15th day of last December, Mexico had a new penal system established according to the new penal and procedural codes issued in October, 1929, by President Emilio Portes Gil, using the special powers given to him by the Mexican congress. These new codes abolish capital punishment and suppress the jury, substituting for the latter a council of experts who shall make a diagnosis of the cases and will advise on the treatment required for the criminals. American specializing in criminology and sociology have been interested in the advancement accomplished by the Mexican criminology, and some distinguished sympathizers of these codes have praised in very voluble terms this new tendency in Mexico.

## *A New Attitude Toward the Criminal*

The new Mexican code is inspired by a new attitude of society toward the criminal. It is inspired in the conception that society does not need to be angry and to be bitter against criminals in order to keep the welfare of the community. In drafting this new penal code we did not need to go, however, so far as to establish that all of the criminals are sick people, as some observers of the Mexican criminology have asserted. It was enough to assume, that criminals are dangerous beings for the common interests of society, for dealing with the problem. Nevertheless it seemed to us that society would have a better chance to combat the evil of crime, if it could acquire something like the coldness and simplicity of physicians and surgeons when they cut and cure. From a technical viewpoint, theory and philosophy of this kind are developed already by universities and institutions of learning. They have been taught for years, but it is the first time that both of them have developed into practical provisions of law, a complete set of codes embracing the new philosophy and dealing with the crime from this new standpoint. If there is any, this is the only real merit of the Mexican trial of a new criminology. Of course it must be considered a test and no more, just the tentative type of the code of the future.

The Mexican penal code has changed even the technology and lexicon in this field of social sciences. We do not use any more the

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<sup>1</sup>Member of the Mexican Bar, Former Professor of Law at the University of Mexico City, and Drafter of the new Mexican Penal Code.

words "punishment," "penalty," or any other one giving the implication of pain, anger or revenge. If we could change even the name of the code, we should abolish the preposterous adjective "penal." We did not insist on this point because the powers given to the President of the Republic of Mexico were nominally restricted to "issue a penal code," and nothing else. Therefore if we should have dared to propose for instance a "treatment code," our politicians could have a chance for objecting to the issue of this piece of legislation, upon the argument that it was a constitutional misuse of powers. Notwithstanding, the drafting committee of the code introduced the word "sanciones" which has no equivalent term in the English language, as far as I know. "Sanción," "sanciones" are used whenever we needed to mention the old "punishment" of former criminal legislation, and we chose to do that not because of snobbish or excessive desire to make changes, but because we wanted to build up a new psychological reaction of the group toward the law, thus procuring that the new entities coming herewith will be understood and named with a new vocabulary as well as handled by newly minded executors. We wanted to remove the essence and the form in these fundamental points of collective understanding. In other words we wanted the code to have a new tendency as well as a new soul.

#### *Treatment Instead of Punishment*

The new penal code of Mexico *individualizes* and keeps *undetermined* the treatment to be given to delinquents, instead of trying to punish them. We assumed it was impossible in the conditions of our country, as it would be impossible to consummate proportional changes in the present conditions of any other country, to abolish the painful element of any misdemeanor or violation of the law. The criminal by putting himself out of the law and becoming a dangerous being to society is giving himself pain and trouble in the same proportion that he causes trouble and pain to society. Compensation operates here as a typical law of social psychology just compensating and balancing.

We did not ignore the painful element as a means of reform and as a help for procuring re-education, but we did not want to inflict pain itself as an essential purpose of the law.

The right of society to defend itself from the evil of crime is absolutely indisputable but criminals in their turn have a true right as members of society to have a chance to be reformed in order to see if they can be refitted and become again useful members of the community. This right was not considered before as a working principle

in the law. Under the old law, pitiful at times for them, they were never given the right opportunity to reconstruct their habits, to react against their own wrong-doings to rehabilitate themselves, and, so, becoming normal in character.

To state that the crime is not only an individual product, has become a common place in modern criminological literature. Hence, if we must mention "responsibilities," society is "responsible" as well as individuals for the event of crime. It is not any more a matter of discussion of anger and bitterness of society for it is absurd that society could be angry against itself and should fight someone of its own members, but if it should be considered a question in this inspiration, then society itself could be blamed and condemned. But let us only imagine the hate cycle. Society is against criminals and criminals are against society. Cycle never stops and there must be a stop somewhere. If we assume that criminals are not expected to be fitted and prepared to stop the cycle, as they really are not, then society must do it. Leaders of the community must then cooperate to get some relief in this difficult situation, because obviously they are better prepared to come to some conclusion than criminals themselves. Society is bound to stop the cycle somewhere before it reaches the extremes and blows up the whole community.

The code establishes means to understand the personality of the delinquents more than crime in abstract or legal elements of the wrong-doings in concrete. In order to get this picture, the code provides for special rules to explore the social environment, the psychology of the individual and his psychiatric and anthropological, handicaps; besides, it has provided a special exploration into the educational balance of the offender in order to know how the school has failed with him and also to understand how far he is misplaced vocationally in society.

### *Why Mexico Abolishes Capital Punishment*

In these premises it is easy to understand why Mexico has abolished capital punishment. If we must deal with the social evils with sincere aims to procure all the resources available to build up the personality of the offenders, we must not put them in a way to be considered disheartedly defeated. It is useless to deprive them of life unless we wish to insist in the old principle of revenge and punishment. This issue of the abolishment of capital punishment was submitted to the outstanding thinkers of the country and all of them agreed with us in this progressive program. We did not try to revive the old debate upon this question which must be considered exhausted from

all the angles of science and knowledge. We simply intended to ascertain whether it should be practical and opportune for Mexico. Undoubtedly the main argument of the enemies of the abolishment of the death penalty, is that society has found no trustful means to deal with the incorrigible offender. We, the drafters of the code, thought that it is not a fair and rightful policy to kill people only because the failure of society in finding better means to defend itself against them.

The deterrent quality of the death penalty is often mentioned and it is deterrent indeed. But it has not been proved that it is the only possible deterrent. If we announce that we shall kill every body passing the door, of course we should establish a deterrent, but evidently this is not the only possible deterrent with which we could create the habit of not to pass the door.<sup>2</sup> We can educate the people to keep away from the door, we could use many things to keep them away from it.

#### *Why Mexico Does Not Trust the Jury Anymore*

When the task of understanding the offender's personality has been started and as soon as the provisions to make a diagnosis are working out this picture, it will be a waste of time to submit these technical findings to the cordial feelings of a group of citizens even assuming that they should be "peers" of the defendant. All of the work already done to get technical data and information upon the subject would be spoiled unless the members of the jury could act as technicians themselves.

On the other hand, the traditional jury was devised as to condemn or to save, according with the old conception of a "fight" between the "people" and the "defendant." It had to choose between two rigid extremes: the "reo" was to be considered "guilty" or "not guilty," and this very forced position was a real psychological complex in which positively justice failed helplessly.

Such is not the situation any more in the Mexican system. We have no extremes at all. In treating with simplicity, we abolished also the dangerous breeding of the evil that the jury trial was in the past. The vivid picture of the crime, the careful describing of the story throughout all the stages of publicity, the whole record of the cases, were certainly a true "propaganda" of the morbid involved in crime and delinquency.

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<sup>2</sup>E. Roy. Calvert, noted British penologist in a lecture delivered last October at Belmont Theatre, New York, in behalf of the American League to Abolish Capital Punishment.

In suppressing the jury we take the medium between these extremes, giving to the "cases" a coldness and softness ignored before by the administration of criminal justice.

*Hunger as Exculpatory Circumstance*

One prominent daily published the other day<sup>3</sup> a large story upon the code and mentioned some of the provisions of it which the periodical undoubtedly considered worthy enough to be given publicity. Unfortunately the culminating item enlisted was a provision of the code, according to which the law does not "punish" in any way stealing when it is caused by extreme starvation, and should endeavor with the most essential requirements to satisfy the hunger of the offender or of his family. The Mexican law establishes in this case, not an encouraging provision for tramps, as the report seemed to suggest, but only one of the many "exculpatory circumstances" of responsibility itemized by one of the Chapters of the code.<sup>4</sup> Hunger is then a "circumstance," as fear or rage, or any other similar strong emotion of the like. The paper, however, reported the provision as one leading item of the code. So, the matter requires some explanatory enlightenment.

We read very often in the papers about the poor tramps perishing from starvation. In Mexico, as here in the United States, this is indeed an exceptional thing, or at least we must desire that it shall always and forever be a very exceptional calamity. But really in criminology the rule is always made for dealing with exceptions. When you make a law to combat murders committed in the United States, you do not mean that in the United States murders are the rule. They are the exception. But exceptional as they are, you must deal with them and try to stop them. As far as I know the exceptional condition of starving has never been considered a ground for devising adequate laws to efficiently get rid of the trouble.

Help must be opportune or it is not help by any means. When the starved fellow falls down on the street, scores of people come

<sup>3</sup>"The New York Times", issue Sept 29, 1929, "Mexico Tempers Law to Fit the Wrongdoers".

<sup>4</sup>The provision of the code reads in Spanish: Artículo 45.—Las circunstancias que excluyen la responsabilidad penal, es decir, las de justificación legal, son: . . . VII. La indigencia no imputable al que, sin emplear engaño ni medios violentos, se apodera por una sola vez del alimento estrictamente indispensable para satisfacer sus necesidades personales o familiares de alimentación del momento".

Thus, it is required: that the miserable condition should not be a habit or a blame of the offender, that he would not use violence at all, and that the exculpatory should be alleged *once* and *no more*.

to his assistance and quickly take him to the nearest relief station. But suppose that the poor destitute should have taken a loaf of bread from the bakery at the corner one minute before he fainted. He would become an offender and would be "punished" like any other regular one, notwithstanding that the social attitude toward him must be the same in both cases and must inspire the same feeling of solidarity and common welfare, which—for instance, built up the relief station for his help.

"The New York Times" published on Nov. 27, 1929, a very interesting story, which reads as follows:

"MOTHER FLIGHT WINS ASSISTANCE AT TRIAL

*Unable to Pay Hotel Bill for Herself and Children, She Gets  
Funds in Court After Night in Cell*

Weak from lack of food and with only 10 cents in her purse, Mrs. Helen Rowe, 33 years old, appeared before Magistrate Gotlieb in West Side Court yesterday morning on a charge of having failed to pay a \$100 hotel bill for herself, her two young children and her aged mother at Hotel Langwell, 127 West Forty-Fourth Street, last May

Mrs. Rowe said she had been the sole support of the family since her husband died a year ago but recently lost her position. She was arrested Monday night as she was taking the children, aged 10 and 8 for a walk, and spent the night in a cell because of her inability to provide a bail.

After Ward Von Hoff, manager of the hotel, had agreed to accept \$50 now and the rest when Mrs. Rowe could pay it, Magistrate Gotlieb adjourned the case until afternoon in the hope that friends would come to Mrs. Rowe's assistance. He advanced her \$20 from the Bricken fund of which he is custodian, and Patrolman Walter Schiffer, who has arrested her, gave \$1.

When the case was called again, Gilbert Jones, crippled proprietor of the rooming house in which Mrs. Rowe and her family occupy a single room, came forward with \$50. Several smaller sums had been received and it seemed that Mrs. Rowe would have a balance above the \$50, to tide her over for a few days.

A representative of the hotel balked however. "That's all very well," he said, accepting the \$50, "but what about the rest of the money? We're running a hotel."

Magistrate Gotlieb insisted that the hotel stand by the arrangement agreed to at the morning session."

The readers easily could ascertain that this story is an inspiration for betterment of the human laws. Such is the teaching that the Mexican code tries to put at work.

### *Statistics of Crime and Capital Punishment*

We lack the statistics in Mexico for establishing with accurate amplitude some figures in the field of these speculations. Certainly statistics are not an adequate answer to the question which is rather philosophical and social in traits. But nevertheless statistics are very suggestive, and Frederick L. Hoffman, has presented them in valuable data compiled from various states in this country.<sup>5</sup> According to these findings of Hoffman, "during the ten years ending with 1926, the average murder death rate in the non-capital punishment States (of the Union), was 42 per million and in the capital punishment States it was 57." In other words, the capital punishment States have had a rate 15 points higher (35.7%), than those non-capital punishment States.

Hoffman says:

The death penalty is enforced in much too small a proportion of the capital cases to have a deterrent effect upon the community at large.

This is illustrated by the experience of the leading capital punishment State for a long period of years. In the State of New York during 1910-1925, there have been 7,434 deaths from homicide. During the same period there have been 200 electrocutions, or at the rate of one to every 43 homicide deaths during the first nine years and one to every 44 homicide deaths during the last six years.<sup>6</sup>

The Mexican drafters of the new penal code had on their desks the figures proposed by Hoffman, even assuming that they are not the clew for resolving the problem.

### *The Council of Experts*

The new codes entail a new organization called the "Consejo Supremo de Defensa y Prevención Social," equivalent to Supreme Council of Social Protection and Defense, which is made up of five, seven or nine members. Counselors of this body must be specialists in sociology and criminology, not merely lawyers. The chief functions of the Council are to effect social prophylaxis and prevention of crime in all its manifestations, and to execute the sentences imposed upon offenders. Under the Council authority will be placed all penal and prevention institutions. Among the first may be listed prisons, places of segregation, centers of solitary confinement, etc., and among the

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<sup>5</sup>Hoffman, F. L. "Murder and the Death Penalty", *Current History*, June, 1928.—"The Homicide Record for 1928", *The Spectator*, March 14, 1929.

<sup>6</sup>"Should the Death Penalty Be Abolished?", By Frederick L. Hoffman, LL.D., reprinted from *The Spectator* by the League to Abolish Capital Punishment, New York City.

second fall juvenile courts, social clinics, reformatories, houses of correction, and other centers of prevention.

It must be said that President Emilio Portes Gil by no means played the part of the official personage who simply signs a law presented to him by a committee of advisors. Being himself a distinguished member of the bar, he kept in the closest touch with the commission which constantly discussed with him the drafting of the most important questions included in the task of reform.

President Portes Gil has appointed a Supreme Council of Prevention and Social Defense, the personnel of which is as follows:

José Almaraz, president of the Council, lawyer, drafter of the Penal Code and Code of Penal Procedure, specialized in criminology at Germany for more than five years.

Manuel Gamio, A. M., Ph. D., Columbia University, anthropologist, sociologist, specialized in Mexican sociology.

Matias Ochoa, lawyer, former judge and district attorney, specialized in penal law and criminology.

Carlos L. Ángeles, lawyer, former judge and district attorney, specialized in criminology and penal law.

Matilde Rodríguez Cabo, a lady, M. D., psychiatrist, specialized in criminology, neurology, psychiatry and juvenile delinquency.

### *The Codes in Their Provisions and Distribution of Material*

The Penal Code is a 270 page volume in 8vo., printed at "Talleres Gráficos de la Nación, Licenciado Verdad núm. 2, México, D. F." This is the official printing made by the "Secretaría de Gobernación," the Interior Department, which is in charge of all of the official printing of laws of the Federal Government. The Code is issued for the Federal District and the Territories of Lower California and Quintana Roo, which are the zones of federal jurisdiction for common matters of common law, civil and penal. The States are sovereign in these legislative activities, but they are expected to follow the example of the Federal District, which in such a point of legislation is leader of the country, and has been imitated very often by the rest of the States in Mexican history.

The First Book of the Code defines general principles upon responsibility and "sanciones" (these the old "punishments"). The Chapter I of this book is devoted to the general theory of crime, according to the new conception of the subject adopted by the new law. Chapter II embraces the different degrees of the intentional violation

of the penal law. Chapter III deals with the problem of accumulation of offenses and fixes the rules therewith. Chapter IV establishes the rules to fix up penal responsibility. Chapter V describes the persons that could be considered offenders or responsible for violations. Chapter VI goes into itemizing the exculpat circumstances of responsibility. Chapter VII fixes common rules to be observed in cases of attenuating or aggravating circumstances. Chapter VIII deals specially with attenuating circumstances. Chapter IX rules in concrete aggravating circumstances. Chapter X considers the rules in the case of the "habitual offender."

Title Second comes then. It comprehends the matter of "sanciones." Chapter I defines, classifies and rules "sanciones" from a general viewpoint. Chapter II considers the "extrañamiento," the "apercibimiento," and the "caución de no ofender." Chapter III governs the fine and its different specie. Chapter IV considers "arresto." Chapter V rules confinement. Chapter VI mentions segregation. Chapter VII describes relegation. Chapter VIII itemizes rules for plain seclusion. Chapter IX organizes the treatment of juvenile delinquency for people under 16 years of age. Chapter X provides for special rules for treatment of the feeble-minded, and the mental or physical crippled or handicapped. Chapter XI describes and rules the "amonestación" to be given in all of the cases of sentencing. Chapter XII is devoted to provide for rules to be observed in regard to the objects or instruments of crime. Chapter XIII commands that the sentences must be published and establishes the cases in which such an action should be warranted. Chapter XIV describes the bond of good behavior. Chapter XV deals with the watching or observance by agents of the police department. Chapter XVI defines inhabilitation or depriving of rights.

Title Third describes and rules the application of "sanciones" and is composed of nine chapters. Title Fourth is devoted to execution of "sanciones" and its five chapters itemized the provisions dealing with the description of the authority of the Supreme Council of Prevention and Social Defense and the rules to be observed in regard to the work of prisoners, attenuation or aggravation in the execution of the "sanciones," and finally the "conditional character of sentences" and how the principle works out and derives in special individualized treatment.

Title Fifth fixes in six chapters how and when the "penal" responsibility must be considered extinct.

Title Sixth considers the cases of extinction of "sanciones" themselves.

The Second Book of the Code fixes the rules according to which the damages caused by the offense are to be repaired. This book contains a table of indemnities in respect to the different parts of the human body, eyes, nose, arms, fingers, legs, feet, and so forth; and computes the amount to be paid for the loss of them. This responsibility is computed, like fines and other similar payments, not in "pesos" or monetarian units, but "in days of earnings," such as: according to the salary received by the offender or his would-be salary that which the offender likely could obtain when working in his own professional activity.

Third Book comes afterward defining and ruling the different types of crimes and the "sanciones" to be imposed upon their doers. This part of the text is the common list of wrong-doings and their old "punishment" with only those essential modifications imposed by the new technology of the law.

The Code has in total 1,228 articles, five more "transitories" providing the date of coming in force of the same and other economical dispositions.

It was announced that the Code will come in force on January 1st, 1930, but at the last hour this date was changed and fixed at December 15, 1929.

At the same time (Oct. 7, 1929), President Portes Gil issued the code of penal procedure, called in Spanish "Código de Organización, de Competencia, y de Procedimientos en Materia Penal, para el Distrito Federal y Territorios," 142 pages in 8vo., same printing foot as the penal code, and containing 726 articles more 13 "transitories."

The Drafters of the Codes were:

*José Almaraz*, lawyer, criminologist responsible for the main part of the draft.

*Luis Chico Goerne*, Dean of the Faculty of Law and Social Sciences, University of Mexico City.

*Guadalupe Mainero*, lawyer and criminologist; and the writer.

### *The New Mexican Criminology and the American Opinion*

Students of the modern criminal movement in this country have received with interest the reform accomplished by Mexico. I cannot resist the desire of mentioning a few of these opinions.

Dr. Raymond Moley, from Columbia University, said when the code was only a project:

Mexico is now opening to the law the way to scientific progress of which many legislators of the United States have not even begun to think.

Dr. Earle E. Eubank, from University of Cincinnati, wrote in commenting on the Mexican project of new criminology:

The whole philosophy which underlies it, is extremely pleasant, particularly inspiring the conception and definition of crime "as a restricted and exceptional spot in human behavior," eliminating punishment "as far as it should be possible to do so and looking always for reform and redemption"; and, trying to work out a "picture of the offender's personality—a diagnosis as accurate as possible, according to which the method of treatment for reforming the offender may be determined."

Dr. Douglas A. Thom, from Boston, Mass., writes in regard to the Mexican trial of a new criminology:

It is quite evident that the progress made in Mexico merits high commendation. That country should feel justly proud of its contribution to the advancement of modern criminology.

Dr. Sheldon Glueck, from Harvard University, comments on the issue of the penal code of Mexico:

If the bill signed by the progressive President Portes Gil really embraces the feature of the Consejo Supremo de Defensa and Prevención Social, this piece of legislation will go down in history as the first significant break with the inefficient and unscientific criminal law and penal philosophy of the past. Of course, removal of the trial of complicated facts from a lay jury and the abolition of the capital penalty are also great reforms; but to my mind they are relatively of secondary importance compared to the provision for the sharp division of the guilt-ascertaining and the medico-correctional treatment functions, and the delegating of the latter to a specialized organization composed of psychologists, sociologists and criminologists. I venture to predict that when the full significance of this reform becomes known, scholars from every part of the civilized world will be interested in following Mexico's epoch-making experiment in scientific criminology.

Sincerely, I believe that, after all, the bold test of Mexico is worth watching. The law is made already, but now the hardest thing is coming: how to enforce and keep the law at work.