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PROGRESS IN MEXICAN PENAL LEGISLATION¹

JOSE ALMARAZ²

Since 1929, Mexican penal legislation has advanced considerably. The first in the world to have accepted in their entirety the scientific principles of the so-called "positive" school, it was forced to make radical changes in its ancient classical laws and introduce the procedure and institutions that the new principles demanded. In the limited space at my disposal I shall attempt to give some idea of the progress that has been realized in this respect.

Fundamental Principles

According to the classical laws of 1871, responsibility for crime is based upon the concepts of moral responsibility and free-will. They posit that all men are equal as regards ideas and feelings and that free-will enables them to choose from the many possibilities that are presented, after their conscience has analyzed the amount of good or evil that these possibilities contain. When we foresee, we deserve any resulting misfortune; but even if we are unable to foresee, we are culpable and ought to be made responsible for our acts by being punished for them.

Recent legislation views the personality—physical (temperament) and psychical (character)—as determined by psycho-physical inheritance and developed or modified by environment. It dismisses the question of moral responsibility, for the delinquent is punishable only insofar as his acts endanger society.

Crime is no longer a legal matter, an abstraction without meaning that entirely disregards the delinquent; it is a voluntary action causing a change in the social environment or impeding it, and presupposing a determined psycho-physiological personality.

The concept of responsibility for one's actions has its source, then, in the capacity to act socially; man is responsible because he is sociable and lives in society, just as a colonel is militarily responsible because he serves in the army. The subjective phase of a crime is thus not only an essential part—it allows also for the manifestation

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of the characteristic symptoms of dangerousness in a delinquent. Responsibility for crime is demanded because of (1) physical culpability or (2) the manifestation of a socially dangerous quality or condition.

Dangerousness is the criterion for declaring someone responsible, i. e., the committing of a crime, or planning to commit it. The degree of dangerousness is determined by the gravity of the criminal act, the nature of the motivation and the possibility of the offender continuing in crime. Social protection is the objective and not revenge, expiation or punishment.

Sentences vary as to specific objectives and as to nature. The ultimate aims in view are the prevention of crime, the rehabilitation of the offender and the elimination of the hopelessly criminal by applying to each type of delinquent the education, adaptation or correction that his condition and the protection of society demand.

If the study of the delinquent is to be of any vital importance in modern legislation, a body of specialists must be created to execute the sentences and apply the penal laws scientifically so that there may be appreciable results in the fight against crime.

How Has This Been Realized in Practice?

1. By the individualization of punishment, that is, by adapting it in kind and length to the needs of the individual in order to prevent the commitment of further crimes. To this end, the authority executing punishments orders the technical examination of each delinquent from various points of view:

- a. Social (including previous life)
- b. Medical and physical
- c. Psychological and psychiatric
- d. Educational

The results of these examinations yield sufficient data for comprehending the delinquency of an individual, for discovering the causes or conditions of the crime, for understanding his psycho-physiological make-up and its functioning—in a word, the nature of the dangerous criminal. Then, through diagnosis and prognostication, the treatments necessary to cause this dangerousness to disappear can be recommended. The treatments ultimately consist of providing the delinquent with the greatest and strongest motives for inhibition. If this proves impossible, the protection of society demands his removal

from it. The authoritative body executing the sentences—composed of specialists independent of politics—selects the methods of realizing this individualization (release on trial, granted when, because of the treatment applied, the dangerous attitude has disappeared; retention or longer imprisonment, when the dangerousness is still present). The sentences are therefore relatively rather than arbitrarily imposed.

2. The commission provided for in the penal code of 1929 is determined to combat the private grantings of short periods of liberty that neither correct, restrain nor render the delinquent harmless and do tend to turn him into a professional. It fixes fines, damages and disqualifications for proved accusations or charges.

In special instances, the casual offender is offered the chance to escape the execution of his sentence by good conduct (conditional sentence); but when an act reveals a personality addicted to crime, an attempt is made to remove this criminal predisposition by a long period of strict segregation and by the application of adequate treatment.

3. The system includes monetary fines—which do not allow for individualization of the penalty—and payments in “days of work.” The fine signifies a charge based on a consideration of the economic situation of the one fined and of the daily proportion of the cost of salaries, wages, rents, etc. Methods of expediting both payment and procedure are provided so that this may be made an actually effective measure.

4. All the money received in the form of fines, damages, bail, etc., is appropriated to assist in combating crime. It was formerly the custom to devote a large portion of this amount to paving, lighting and other municipal services, ignoring the present special objectives of prison improvement, treatments for delinquents, etc.

Proponents of the new legislation are greatly concerned with the economic aspect of the penal problem. This phase has of necessity given rise to many detailed laws on payments of damages for losses caused and on prison labor. Payment of damages was previously considered as a civil responsibility of the offender, since a crime permitted either penal or civil action to be taken. Because of this civil responsibility, which was fixed before a civil court, payment of losses occasioned by the offense was demanded. This erroneous way of regarding the question was yielding unsatisfactory and quite valueless results as far as punishment and social protection were concerned. The new legislation completely changes the attitude toward payment of losses sustained and provides:

- a. That the payment be an integral part of the entire penalty.
- b. That the fine be extended to include the restoration of the loss and of the broken law as well as reimbursement for damages, whether they be material or subjective.
- c. That in case of death, the reparation include funeral expenses, doctor's bills and support for all those previously dependent (legally) upon the victim.
- d. That money received through fines be used—secondarily and in accordance with the nature of the payment—to supplement the funds of the executive body for enabling the delinquent to make a fresh start in life or for paying him for his prison work.
- e. That action for the payment of damages shall be taken by the Public Ministry and decided upon by the penal judge when fixing the penalty.
- f. That even if the person sustaining injury shall not demand it, reparation shall be exacted from the delinquent, for it forms part of the penalty and is social in purpose.
- g. That neither pardon, conditional sentence, release on trial, nor any other privilege shall relieve the offender of this payment.
- h. That the State assist the person sustaining injury so that his case may be prosecuted gratuitously.
- i. That reparation payments be exacted before all else.
- j. For the establishment of a reserve fund for the authoritative body executing the punishments, so that the loss sustained may always be recovered.

The labor of the prisoners must be so organized as to be

- a. Obligatory
- b. Useful
- c. Productive, and
- d. Suited to their various qualifications.

After an examination of the entire personality of each delinquent, the executive authority attempts to assign him to a special kind of work that shall combine these requisites and at the same time be most advantageous to him. The work is paid for at a just rate, and fines and reparations for damages are covered by what is produced. Industrial and agricultural work has been organized in all the institutions for adults and minors, sick and well, normal and abnormal, and a large wood-distilling plant is going to be installed in the hope of

better results. The intention is, through the well-organized work of the prisoners, to obtain a profit for them and to pay their expenses.

5. It is only natural that with such a radical change in principle, entirely new institutions would be established. The most important of these is doubtless that relating to the authoritative body executing the punishments, called the Supreme Council of Social Defense and Protection. This is composed entirely of specialists in modern penal law and related sciences such as criminal sociology and biology, psychiatry, statistics, etc. The five magistrates are well acquainted with the cases of release on trial, retention, costs of fines, bail and payment of damages as well as with the organization, direction and administration of prisons, reformatories, insane asylums, homes, sanatoriums, prison farms and camps, schools for correction and other places for delinquents. They are assisted in their work by specialists who are divided into various departments. The social division gathers information on the previous life of each delinquent, on his social and economic level and on the effects of the ambient air of the prison. It investigates the social causes of his delinquency and recommends the methods of most effectively lessening the influence of these factors. The medical division makes a medical and physical examination of each offender, a study of his constitution and fundamental physiology and presents suitable treatments from this point of view. It organizes and controls also the services in the different establishments for prisoners. The division of normal and pathological psychology examines the prisoner, studies his personality and his mental functions, classifies him, discovers his abnormalities and tendencies and advises the treatment and special activities he should have. The educational division investigates the knowledge of the delinquent, his scholastic level, his aptitude for learning, his culture and brightness and indicates the nature of the instruction to be given. There is also a judicial division that sees that the treatments recommended by the other sections are applied, observes the results and is generally authoritative until the magistrates grant release on trial (if there is evidence of correction and rehabilitation or of the disappearance of a dangerous attitude).

In this way, a penalty is neither applied nor terminated carelessly; it is executed with full scientific knowledge of the personality of each delinquent. Only thus can an effective fight be waged against crime.

Other institutions of no less importance have been created. The mental hygiene clinic in the interest of crime prevention provides

adequate treatment to epileptics, epileptoids, syphilitics and to individuals whose constitution or psycho-physical make-up is leading them toward crime. The prevention is more important than the cure. An appreciable improvement has been noted in many individuals who have regularly submitted to these preventive measures.

Also worthy of mention are the industrial schools, institutions of correction, homes, farms and reformatories for abnormal minors and those feeble-minded who can be educated.

Penal Procedure Has Been Subjected to Intelligent Reforms Also

Single judges have been replaced by Penal Courts consisting of three judges who frame the law-suits, study the personality of the accused and submit their final opinion for the approval of one another. The case is discussed and sentence passed according to majority vote.

The new legislation demands that the employees and officials of the prisons be technically trained and prove their specialization.

Judicial law is thus separated from civil, and the career and judicature of penalists is based on competence and age.

The popular jury—an absurd relic of an era in which the grossest imitation held forth—is not included in the canons of positive law and for that reason has disappeared. If social protection demands measures for eliminating, curing, educating and rehabilitating the delinquent personality, and if these can be perceived scientifically only by technicians specially trained in these studies, it is evident that a decision as to the dangerousness or lack of dangerousness of a delinquent and the effective methods for rendering him harmless or useful to society cannot be made by a group of individuals chosen by lot and lacking the most elementary knowledge of the subject.

The remaining laws of the penal code have been formulated to facilitate the rapid and unobstructed realization of substantial penal rearrangement.

The authoritative body executing the punishments is constantly receiving statistical data that discloses the results of the new penal legislation. It has not ventured to contend that much has been accomplished in practice already. So far, however, the chief magistrate of the Council of Social Protection and Defense is recording information that is eloquent as regards the curing of alcoholics and drug addicts, the rehabilitation of delinquents suffering from glandular malfunctioning, of homo-sexual minors, of individuals with sufficient

inhibitory motivations and of others who are delinquent because of the environment in which they have lived.

Such, broadly speaking, is the important penal progress that has been realized in Mexico since 1929. If the government continues to be interested in assisting those officials charged with combatting crime, and if politics place no obstacles or difficulties in the way, it is almost certain that we soon shall be able to show, by incontestable data, a cessation of repeaters, a decrease in the number of delinquents and consequently, effective social protection.