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Notes and Announcements

NOTES AND ANNOUNCEMENTS

The Ninth Congress of the International Association of Penal Law

(The following report on this Congress was submitted to us by our Consulting Editor, Professor Gerhard O. W. Mueller.)

The Ninth Congress of the International Association of Penal Law (Association Internationale de Droit Pénal) met at The Hague, Netherlands, from August 24 to 29, 1964. The host government placed its Parliament buildings (Binnenhof) at the disposal of the Association, which is one of the nongovernmental member organizations of the United Nations. The 600 congressists represented over 70 nations, and all participants were either the official representatives or observers of their governments or scholars of criminal law.

Professor J. M. van Bemmelen, of the University of Leiden, served as President of the Congress and Professor Jean Graven, of the University of Geneva, as President of the Association.

This was only the second time that a United States delegation was in attendance. But the U. S. delegation was among the largest, with 40 ranking American criminal law scholars, among them Professor and Mrs. Sheldon Glueck (Harvard), Honorary Chairman of the delegation; Professor G. O. W. Mueller (New York University), President of the American National Section; Professor B. J. George (University of Michigan) President-Elect of the American National Section; Professor Louis B. Schwartz, Co-Reporter of the American Law Institute Model Penal Code Project; Professor Morris Ploscowe, International Reporter General of Topic #2; Dean Kenneth A. Pye (Georgetown University); and many others.

The American National Section had prepared papers on all four topics, which had been published in advance, in a symposium issue, "The Collected American Papers for the International Congress of the International Association of Penal Law—1964," 35 U.M.K.C. L.Rev. 1 (1964):

1) B. J. George—Aggravating Circumstances in American Substantive and Procedural Criminal Law;
2) Henry H. Foster, Jr. and Doris Jonas Freed—Offenses Against the Family;
3) Duane R. Nedrud—The Role of the Prosecutor in Criminal Procedure;
4) A. Kenneth Pye—The Effect of Foreign Criminal Judgments in the United States.

The American National Section had also assumed international responsibility for preparation of Topic #2, on which reports from 22 nations were received. These are to appear in a symposium issue of the Revue Internationale de Droit Penal, together with a general report by Professor Ploscowe as Reporter General, and a report on the preliminary meeting on the topic, held at Bellagio, Italy, by Professor G. O. W. Mueller.

The Royal Netherlands Government had thoroughly prepared the organization of the Congress and the Association had framed the issues on all topics in four preliminary meetings. Hence, the congressists could concentrate on all four issues and arrive at the following resolutions which may well be taken as the *communis opinio scholarum:*

Section I

Aggravating Circumstances, Other Than Concurrent Offences and Recidivism

Considering:

That there exists a very wide variety of legislative techniques for the purpose of emphasizing the special gravity of an offence and of punishing it adequately;

That it is desirable for such techniques to safeguard the rights of the accused by observing the principle of legality and individualization of punishment, while being capable of adaptation to each particular case;

That, although it is sometimes very difficult to realize both these aims in full at the same time, one should seek to strike an equilibrium between the two;

That the legislations of the various countries present various systems for achieving this result, either through a choice between the minimum and maximum limits of a penalty provided by the law or by applying a penalty in excess of the normally provided maximum.

Notwithstanding this variety in legislation, whenever a system of aggravating circumstances is provided for, it appears desirable to the Congress:

1. That insofar as possible and with due regard to the requirements of criminal policy imposed by tradition and the particular nature of the various national legal systems, aggravating circumstances

be dealt with in the general part of the Penal Code;
2. That consideration of aggravating circumstances take place with due regard for the general rules of subjective responsibility;
3. That application of aggravating circumstances be left to the discretion of the Courts;
4. That in cases where aggravating circumstances do not allow the legal maximum to be exceeded, a non-restrictive listing of aggravating circumstances be furnished to the Courts by way of example, but that the Courts may, if necessary, consider others.

Such listing should have regard to the objective aggravating elements of the offence, and to the particularities of the offender's personality and the motives for his behaviour in order to ensure the better resocialisation of the defendant and protection of society;
5. That active comparative studies be undertaken concerning the criminological aspects of the aggravating circumstances considered in the various legislations so as to permit a solution to be found for the essential practical problems in this field of criminal law.

Section II

Offences Against the Family and Sexual Morality

The Second Section of the Congress, considering the importance of the questions which it has been dealing with, has tried to prepare moderate conclusions concerning certain problems. But in taking this position it remains aware that this constitutes only a first juridico-penal approach to a matter in which it is the desire of the Section that in years to come criminological studies be undertaken as regards sexual offences, so that a systematical juridico-penal elaboration be possible in the future.

Resolution I.

1. Wherever fornication is a crime, it should be eliminated from the criminal law.
2. Adultery should not be made a criminal offence.

Resolution II.

Where incest is punishable, the crime should be limited to sexual relations between ascendents and descendents and between brothers and sisters.

The proceeding, particularly in criminal cases of incest, should include studies of the defendant and his social and familial environment.

Resolution III.

The distribution of birth control information and means of preventing conception should only be deemed infractions of the penal law if it violates legal prohibitions against pornography or obscenity, or is contrary to the necessities of protecting youth.

Resolution IV.

In countries which prohibit abortion it is necessary to enlarge the possibility of obtaining legal abortions. In all cases in which the law authorizes a woman to interrupt her pregnancy, such interruption of pregnancy should be carefully regulated by law.

Resolution V.

The criminal law should not prohibit the practice of artificial insemination except in the single case where the insemination takes place without the consent of the woman and of her husband.

Resolution VI.

The criminal law should prohibit homosexual behaviour under the following circumstances:
a) where force or violence is used to compel homosexual behaviour;
b) where a minor is involved in homosexual behaviour by an adult;
c) where an individual in a position of trust and confidence abuses his position and involves his ward or the person entrusted to his care in homosexual behaviour;
d) where the homosexual behaviour occurs openly or in such a way as to instigate others to perversion;
e) where it instigates homosexual procuring.

Homosexual behaviour, either male or female, between consenting adults which does not violate any of the aforementioned elements should not be prohibited by the criminal law.

Resolution VII.

The problem of non-support of wives and children is a serious social problem, which has increased with the increasing mobility of modern society.

It is recommended that an international committee of the Association Internationale de Droit Pénal, of experts in family law, criminal law and international law, be created for the purpose of making a socio-legal investigation of the problem.

The existing U.N. Convention of 1958 on this topic and the work of other associations like the Société Internationale de Défense Sociale and the Société Internationale de Criminologie should be studied in future efforts directed at finding effective remedies for dealing with the non-support of wives and children, which may be adopted on a world-wide basis.

Section III

The Role of the Prosecuting Organs In Criminal Proceedings

1. The Public Prosecutor's task, which is to protect the social and legal order disturbed by the commission of an offence, involves a heavy social responsibility. He must discharge his duties with objectivity and impartiality and with due and constant concern for safeguarding human rights. In discharging his functions, the Public Prosecutor must keep the offender's rehabilitation in view.

2. As regards the institution of prosecutions there are two opposing systems: the system of legality and that of discretionary power ("opportunité"). Either is admissible in principle, provided that the manner of application ensures good administration of justice. Certain correctives to these principles are indispensable to check arbitrariness on the one hand, and legal inflexibility and formalism on the other. Such correctives must be inspired by considerations of humanity, fairness and social usefulness.

Nevertheless it is necessary to undertake a wider study of the value of the existing correctives to both systems, and perhaps also to improve them and consider criteria capable of leading to new correctives.

3. Many countries, considering prosecution an extension of the maintenance of order, feel that it is the responsibility of the Executive, to whose authority and orders the prosecutor must therefore be subject.

In other countries, however, the law has made the prosecutor independent of such authority, and in others again, legal and social developments have permitted him to achieve a large measure of independence.

The Congress has paid close attention to the considerations in favour of a wide autonomy of the prosecutor vis-à-vis the Government. It deems, however, that such autonomy should not exclude a posteriori supervision and possible sanctions, or the power of stimulating prosecutors when the vital interests of the nation are at stake.

4. The social importance of the Public Prosecutor's rôle requires that special attention be given to his professional training and high moral qualities. As for his professional training, thorough knowledge of criminology is necessary inter alia, which should be perfected during his career.

Section IV

International Effects of Penal Judgments

I. General observations

1. It is desirable in principle that penal decisions rendered in one State should be able to be recognized in another State. Such recognition is not incompatible with the idea of sovereignty. Actually the excessive nationalism which keeps nations divided has, in many cases and particularly in the field of criminal law, given way to a spirit of co-operation which conforms to international solidarity. Further, the practical difficulties involved in giving effect to foreign penal judgments can be overcome as a result of the recent contributions of comparative law.

2. The nature and extent of the effects of foreign penal judgments will depend on the degree of similarity of the political, cultural, social and legal backgrounds of the States concerned. It is essential to distinguish between effects which by their nature are mainly regional, and those which are mainly international. At present recognition of the possibility of enforcing foreign judgments in general and particularly the supervision of probationers and parolees of foreign jurisdictions, can be considered only within regionally defined groups of States which operate under similar principles of public life. On the other hand, nothing stands in the way of prompt recognition of particular effects even between States having fundamentally different basic structures.

II. Preconditions for recognition

1. (a) First, recognition of a foreign penal judgment presupposes that it has the status of res judicata.

As a rule, judgments entered in the absence of the offender should not be recognized. Such judgments may, however, be recognized if they involve minor offences, such as traffic offences, and if the offender had an opportunity to present his defence.

(b) Further, as a general rule, recognition of a

foreign judgment will actually mean a double penalty for the offence in question.

(c) Finally, as a general rule, there will be no recognition in cases of political or connected offences, or of military or tax offences. However, special agreements in these matters are not to be excluded.

2. The procedure in the foreign court which resulted in the judgment whose recognition is sought must conform to the fundamental principles of criminal procedure under the rule of law, as set forth in various generally recognized international declarations and agreements.

3. Recognition of a foreign judgment is subject to the national "ordre public". The concept of "ordre public" as used here means the essential interests of the State.

III. The various effects

A. Negative effects

1. (a) The negative effect of the res judicata quality of a penal judgment rendered abroad ("ne bis in idem") should be recognized by all States to the largest degree possible. This should particularly be applied in cases where the interested State (i.e. the State where recognition is sought) has only subsidiary jurisdiction.

(b) But even in cases where the interested State has principal jurisdiction, recognition should be foreseen. In this context this is particularly true in cases of offences against legally protected personal rights (life, liberty, honour) and offences involving special interests (currency, prohibition of the release of nucear energy, aviation safety).

(c) Certainly tlhe penalty served for an offence in one State should at least be capable of being taken into account in determining the penalty to be imposed in another State for the same offence.

(d) In spite of the res judicata quality of a judgment rendered in one State, and without regard to the requirements of "ordre public", it might in exceptional cases be possible for the highest judicial authority of another State (e.g. the Minister of Justice or the Attorney General) to institute fresh proceedings for overriding reasons of justice (wide divergencies in the penal appraisal of the offence in the States concerned, the existence of telling reasons in favour of reopening proceedings...).

(e) In the case of a penal judgment involving a conviction its res judicata quality can be recognized abroad only if the penalty has been served, rescinded or barred by limitation. This does not apply when a national State ensures enforcement of a sentence rendered in another country.

(f) If a criminal prosecution is brought in one State for an offence committed in that State, the judicial authorities of other States should have the possibility of refraining from instituting a prosecution for the same offense ("principe de l'opportunité"—principle of discretionary power).

B. Positive effects.

2. (a) Even for States between whom unlimited enforcement of foreign penal judgments cannot presently be considered, the possibility of working out agreements on limited enforcement relating only to certain groups of offences (e.g. traffic offences), should be studied.

(b) When it is possible either to extradite a convicted offender to the State having rendered the judgment, or to enforce the penalty in the State of residence, the convicted offender should at least be heard before a decision is made.

(c) The State which entered the judgment should recognize an enforcement of the judgment in the State of residence.

3. Enforcement will not be effected:

—if limitation of the penalty has been obtained by virtue of the law of either the requesting or the requested State;

—or if the offender has obtained a pardon or amnesty in either the requesting or the requested State.

4. In enforcing a foreign judgment, the requested State will, if appropriate, substitute such penalty or other measures provided in its own legislation for an analogous offence, in place of the sanction imposed by the foreign judgment. Such substitution should never worsen the position of the convicted offender.

5. (a) Consideration should be given to enabling a State to ensure, within its territory, the supervision of persons conditionally convicted or released in another State (parole, probation and analogous measures). Such a system of mutual assistance would be an excellent instrument of modern criminal policy not only between States with broadly similar legal systems, but also within a wider framework.

(b) The basic decisions to be taken during such supervision may be made either by the sentencing State or by the State of residence, preferably by the latter for reasons of simplifying procedure. It is important to know whether revocation of the conditional suspension of the penalty or the condi-

tional release must ensue as a result of another offense or be ordered for other reasons.

(c) Execution of the suspended or remaining prison sentence should as a rule be effected in the State of residence. However, one might consider a combination of supervision in the State of residence with execution in the sentencing State, notably when the State of residence cannot decide on ensuring execution.

6. (a) Independently of whether execution will be granted in a State upon a foreign penal judgment, certain effects of the judgment, such as disqualifications and prohibitions (e.g. revocation of driving licence, prohibition to engage in certain trades or professions) may the interest of the legal order of the State be enforced in its territory to the extent that its law provides for such effects.

(b) Secondary penalties and subsidiary measures under national law may likewise be attached to a foreign penal judgment through the institution of a subsequent proceeding.

7. Further, it is to be hoped that, as far as possible, a conviction rendered in one State will have special results with respect to a proceeding instituted in another State, when the previous judgment does not determine a legal sanction but determines a fact or a legal status.

(a) A precondition for this is an exchange of judicial information, to be ensured in the widest possible measure by bilateral or multilateral conventions. When expunging entries from criminal records, foreign convictions should be treated in the same way as convictions by national courts.

(b) As regards the fixing of the penalty, foreign convictions should to a very large degree be taken into consideration by national Courts. This applies to fixing the penalty in general, to the granting or revocation of suspension of the sentence or conditional release, to a later fixing of an aggregate penalty, to recidivism and to aggravation of the penalty for dangerous habitual offenders, insofar as this possibility is provided for by national legislation.

(c) Also when special measures are to be undertaken previous foreign convictions should be taken into account in the same way as those rendered by national Courts.

(d) Nor are there any objections to consideration of previous foreign convictions when decisions are to be made on the granting of rehabilitation, pardon or amnesty.

(e) Moreover, foreign penal judgments may be given effect within the frameworks of civil, administrative and procedural law, whether occurring automatically or as a result of fresh proceedings.

8. The foregoing should not affect the international effects of civil law decisions made by a foreign criminal Court.

IV. Recognition procedure

1. The question whether and to what extent enforcement proceedings are required for the recognition of a foreign penal judgment, or whether proof of the judgment will suffice, should depend on national law. As a rule enforcement proceedings will be necessary only in the case of enforcement of the foreign penal judgment or of supervision.

2. Insofar as recognition of a foreign judgment is based on an international convention, examination of such judgment should be confined to the procedural aspects of the case; consequently there should be no "review of the merits". However, the requested State should reserve the power of adapting foreign sanctions to its own law. Insofar as recognition is effected only according to national law, the spirit of international solidarity would require reliance in principle on the propriety of the foreign system of justice.

V. Final observation

It would be desirable that the settlement of litigation which may possibly result from application of the principles set forth herein, be submitted to an international jurisdiction.

The Problem of Educating the Correctional Practitioner

An article bearing the above title appeared in the March, 1965 issue of this Journal (Vol. 56, No. 1, P. 45). It was authored by Julian Roebuck, Associate Professor of Sociology at Louisiana State University, and Paul Zelhart, Teaching Fellow in Psychology, at the University of Alberta, Canada. Following is a comment upon the article, submitted by Professor T. C. Esselstyn of the Department of Sociology of San Jose State College:

"Since I am the author of one of the articles cited and was chairman of the California Probation, Parole and Correctional Association Sub-

Committee on Curricula with whose work the authors disagree, you may be interested in the following comments—which I offer for inclusion in an issue published as soon after receipt of this letter as practicable.

"I agree with the position that undergraduate education is not training for corrections. In the Department of Sociology and Anthropology at San Jose State College, we have always insisted that this is true. We prepare undergraduate students for the correctional services by a rich education in the liberal arts. A small part of this education includes basic informational courses in criminology, juvenile delinquency, probation and parole, and two courses which convey the theory and philosophy of social work. But this is not training for corrections. We do not pretend that it is and I am glad to see that Roebuck and Zelhart are on our side in this.

"I agree with their statement on graduate education. We are now drafting a model for a Master's degree in Corrections within the Curriculum Sub-Committee of the CPPCA. If adopted by that body and by my own college, our MS program in Sociology which offers an opportunity for limited specialization in corrections will be extensively modified, perhaps even discontinued. Like the earlier views on psychoanalysis, it was offered as one form of graduate program at the time when it appeared, although we always recognized that the day would come when perhaps we could do better. That day may now be close at hand, although profound pedagogical and administrative problems make any announcement at this time premature by about five years. As to the MSW with a correctional emphasis, this too, at least in my judgment, seems to be a promising and wholly productive trend for corrections and I agree with the authors on that general point.

"I disagree with Roebuck and Zelhart that '. . . sociology is not designed to school "treatment men" or "correctional managers." Sociology has no methodology or treatment techniques to effect changes in value systems or attitudes of offenders.' (p. 49) This ignores almost everything that has been done in sociology from Shaw and McKay to Empey and Rabow.

"I disagree with their statement that '. . . one cannot turn out simultaneously in one package liberal arts products and correctional practitioners.' (p. 51) Why not—we are doing it every semester. We do not intend to, but that is the result. As stated above, our intention is to produce people well-based in the liberal arts and that is also the intent of the CPPCA undergraduate proposal. We know that we accomplish this. We know also that out products turn out to be good correctional practitioners. A statement like this from Roebuck and Zelhart is a little like saying that a bumble bee cannot fly. Everyone knows it but the bumble bee.

"I do not really understand what the authors want to eliminate from the CPPCA curriculum proposals. For the record, I am referring here to *The Practitioner in Corrections*, CPPCA, February 1964. I note that Professor Roebuck's name appears as a member of the Sub-Committee which produced the statement on curricula, pp. 23–27 of that publication. He now attacks that statement but nowhere is it clear why he does so. There is not a single course in the CPPCA proposal that is not already well fixed somewhere in the learned disciplines. The one possible exception is the course on Probation and Parole and its justification could well be debated.

"The courses suggested in the proposal can be distributed widely throughout three educational zones—the student's general education requirements, his major, or his unspecified electives—these being the three parts into which the undergraduate's course load is commonly divided. They need not bog down any one of these three parts. Sociology is the obvious major but it is only one of several which are possible under the arrangement which the CPPCA has proposed and which Roebuck and Zelhart seem not to have studied sufficiently.

"The objection that no one discipline has been singled out to house this program is a weak one. No one discipline has yet been shown to prepare undergraduate students for corrections better than some other discipline. All have something to give. This has long been true and the CPPCA proposal accepts this.

"The section on the poll is somewhat obscure. It does not seem to relate to the prior material and it does not support clearly the authors' conclusion that a modified MSW or a new MS degree in Corrections constitute the proper graduate route. As a matter of fact and as stated above, I actually agree with their position on these two developments and so does the Sub-Committee on Curricula within the CPPCA. Pending the emergence of either or both programs, however, it is a serious error of fact to maintain as the authors do that students who have majored in sociology are poorly equipped to perform as correctional case workers or as correctional managers. Hundreds do!"

Honorary Degree Awarded Police Superintendent O. W. Wilson by Northwestern University

At its June, 1965 commencement Northwestern University conferred an honorary degree of Doctor of Laws upon Chicago's Police Superintendent O. W. Wilson.

The following citation accompanied the degree:

> Six years ago the people of Chicago asked, "Who will watch the watchmen?". They chose him—policeman and professor, scholar and administrator—rare man indeed! He has more than justified their choice: he guards the liberties as well as the safety of all in the city he serves so honorably and wisely.

The commencement program contained a biographical sketch of Superintendent Wilson, which read:

> While a student at the University of California (A.B., 1924) he worked as a police officer in Berkeley. After holding two posts as Chief of Police: at Fullerton, California, 1925–26, and at Wichita, Kansas, 1928–39, he joined the faculty of the University of California, Berkeley, as Professor of Police Administration. In 1950 he was appointed Dean of the School of Police Administration, a position he held until 1960. At Harvard he was lecturer to the Bureau of Street Traffic Research in 1937. He has also been police consultant to the Public Administration Service of Chicago, 1939–43, and to the Insular Government of Puerto Rico, 1951. From 1943 until 1947 he served as Lieutenant Colonel, and later as Colonel, in the United States Army Corps of Military Police in Germany and Italy. From 1941 until 1949 he was President of the Society for the Advancement of Criminology. Since 1960 he has been Superintendent of the Chicago Police Department. He is the author of three standard texts in the field of police administration: *Police Records*, 1942, *Police Administration*, 1950, and *Police Planning*, 1951.

Intern Fellowships for Field Studies in Criminology

The School of Criminology of the University of California is offering Intern Fellowships for Field Studies in Criminology. The areas of study available to the fellowship recipients are:

1. Clinical and educational psychology and the problems of school dropouts and disturbed children;
2. Clinical psychiatry, including six-month internships at the Langley Porter Neuropsychiatric Clinic in San Francisco;
3. Studies in group counseling and group therapy in the probation, parole, and correctional setting, including narcotic addicts and alcoholics;
4. Community studies, especially those of new urban areas and those in which there have been rapid and far-reaching population changes;
5. The study of problems in social psychology: delinquency, cultural deprivation, the effect of detention upon juveniles and the problems of the prison and parole subcultures;
6. Criminalistics, to study the physiology of certain mental conditions and the effects of drugs upon them.

The Fellowships carry stipends of $1800 to $2400, plus tuition and fees. Letters of application or requests for further information should be addressed to Dean Joseph D. Lohman, School of Criminology, University of California, Berkeley, California.