

THE CRIMINAL LAW IN FORCE IN ITALY.

The new Italian Criminal Code passed June 30, 1889, which went into effect January 1, 1890, is the most important of the legislative innovations accomplished since the organization of the Kingdom of Italy. Moreover, it has been considered by foreign jurists as a great advance on the systems of criminal legislation in force in other countries.

The original draft of the Code was brought in in 1863 by Minister Pissanelli. As a result of long studies and thorough discussions, it was thereafter very greatly modified. Finally, in 1866, the administration appointed a commission to study it. Their studies were then carried on without interruption, especially under the ministry of Vigliani in 1874; of Mancini in 1876; of Zannardelli in 1882; and of Savelli in 1883. These statesmen requested all living jurists and university professors and judges to discuss and to help perfect the draft Code presented to Parliament. The fundamental principles of the form so proposed, after having been studied by parliamentary commissions, were long and thoroughly discussed, both in the Senate and in the Chamber of Deputies. As a result of these discussions, the representatives of the nation introduced various modifications, and finally appointed a new commission of jurists to examine these modifications. This commission composed of the most eminent criminal jurists, chosen by the Senate, by the Chamber of Deputies, by the Administration, and by the Universities, completed its task during the ministry of Zannardelli in 1888-1889.

The prior studies, the thorough discussions in the Senate and in the Chamber of Deputies, and the proposed amendments, were thoroughly examined, and the draft was then given its final form, under which it was published by royal decree.

Thus the penal code of the Kingdom of Italy is the result of a continuous work, extending over a quarter of a century, and it may well be designated as the most important reform of our epoch.

It is divided into three books. The first treats of the fundamental rules on the scope of the penal law and the repression of crimes. The second defines the various categories of crimes and formulates the principles, according to which the intrinsic nature of every criminal act is fixed. The third relates to acts, which without being considered in themselves as crimes, are nevertheless punishable for the protection, either of the individual or of social interests.

Book I., on Crimes and Punishments in general, contains the fundamental portion of the criminal law. It is divided into nine parts, as follows:

1. The application of the criminal law.
2. Punishments.
3. The effect and the execution of the sentence. .
4. Cases of guilt and the cases in which it does not exist, or exists with modifying circumstances.
5. Of the attempt.
6. Of the cases where the crime was committed by more than one person. .
7. Of the cases where various crimes are committed in one act and the punishment thereof.
8. Of the recurrence of crimes.
9. The statute of limitations in criminal law.

The first of these parts treats of the rules on the authority of the penal law and on the obligatory force of that law in respect to punishable acts. The Legislature designates as a crime any punishable act, and does not introduce various grades of crime based on the severity of the punishment as felony, misdemeanors and simple offenses. The only distinction made is that between crimes and simple offenses, which corresponds to the *crimen* and the *delictum* of the Roman Law, and this distinction is based not on the severity of the punishment, but on the nature of the act itself, whether it in itself is criminal or not criminal. There is no definition of a crime (*reato*); nothing more than the negative formula that there can be no crime except such as is designated in the Code, nor any punishment unless the Act of Legislature has provided for it. The criminal law has no retroactive force,

unless it be in favor of the criminal; a more favorable law will regulate the trial and punishment of the act committed before its passage, and if, according to the new law, an act, which at the time of its commission was criminal, is no longer punishable, not only can an action not be brought, but the judgment of guilty passed during the existence of the former law can no longer be carried into execution and is without force.

The new Code preserves the principle of the territoriality of the penal law. At the same time, as to crimes committed in the kingdom, a distinction is made between the acts of citizens and those of foreigners. A citizen is always to be judged by the Italian courts. A foreign fugitive from justice may be brought before the Italian tribunals, if the Minister of Justice so demand.

As to crimes committed outside of the Italian kingdom, but against the security of the State, the principle of territoriality is respected, but at the same time the national justice is considered as a complement of the foreign justice. Therefore, one who has been guilty of an act in a foreign country against the safety of the Italian kingdom, and who has been brought to trial in that foreign country, may be prosecuted in Italy, if the Minister of Justice so demand, whether he be a foreigner or an Italian, provided he be found in the Italian kingdom.

The new Code does not permit the extradition of a citizen or that of a foreigner because of political crimes, or crimes connected with political crimes. As to other crimes, the extradition of a foreigner may either be offered or consented to by the Italian government, but only after an examination, in accordance with the judicial authority of the place in which the foreigner is found. Thus the principle of extradition is admitted by the application of the principle of territoriality of the criminal law, but the consent thereto is not considered as an administrative act, inasmuch as it must be preceded by a judicial examination. The political authority can merely order the provisional arrest of a foreigner, for the purpose of offering extradition, or because of a demand made by the foreign state.

The second part treats of punishments. The aim of the penal system is not to break down the criminal, but to correct his criminal tendencies, by means of the proper penal measures. The Chamber of Deputies decided on the 8th of June, 1888, to abolish the death penalty, and this penalty has, therefore, been omitted from the new Code. The principal punishment is imprisonment at hard labor. There are three grades of imprisonment. First, for life, which has taken the place of the death penalty. Second, for a limited period, with penitentiary discipline. Third, simple imprisonment.

Imprisonment for life at hard labor is designated *Ergastolo*, and is the punishment for the most serious crimes. Imprisonment for years with the Irish penitentiary system is the usual punishment for crimes. It is called *Reclusion*, and imprisonment for a time without hard labor is called *Detention*. It is the punishment applied to those found guilty of crimes which do not display a high degree of moral perversity.

There are also less serious punishments. Obligatory residence which is in restraint of the liberty of the individual, in that it condemns him to live in a certain place. The deprivation, either for life, or for a time, of various public rights, and the fines, of which there are many. The punishment for simple offenses is arrest and imprisonment in special jails, fines and the suspension of the exercise of a profession or a calling.

Finally, the Code has two other kinds of punishments for minor offenses. The one is the judicial reprimand, which consists of a reprimand by the court in public session, having regard to the circumstances of the case and the standing of the defendant. The other is special police surveillance. The person under surveillance must keep the police continually informed of his whereabouts, and must observe certain rules. A characteristic feature of the Italian penitentiary system is that by means of the gradation of punishment, it can be made proportionate to the degree of moral perversity displayed in the crime. Moreover, as the criminal gradually reforms, the punishment may be suspended by a conditional freedom. The conditional or temporary freedom is granted to one who has

been condemned to *reclusion*, or to *detention*, and who has suffered the greater part of his punishment, and shows by his conduct that he has reformed. This principle was introduced in order to better the moral condition of a criminal during his detention, and its exercise has been surrounded by the Legislature with many guaranties. In the first place, it is applicable only to punishment exceeding three years imprisonment in order that there may be time for a gradual moral betterment of the prisoner.

Then a certain portion of the punishment must have been undergone, in cases of *reclusion* three-fourths and *detention* at least one-half, and the unfinished part of the term must not exceed three years.

Moreover, it is not applicable to all crimes; certain ones are enumerated in which it cannot be granted, as in conspiracies, rape, extortion, vengeance (*reato*); in cases of a second or a later punishment for homicide, or for certain thefts, and in all cases in which the criminal had for a previous crime received a sentence exceeding five years.

Moreover, the conditional freedom may be withdrawn at any time.

The third part treats of the effect and the execution of the punishment. The effect of certain findings of guilty is the restriction of the legal rights of the criminal, designated in the Roman law as *diminutio capitis*. One condemned to *Ergastolo*, that is, imprisonment for life at hard labor, cannot be a witness, and if he has made a will before the commission of his crime, it is of no effect. Furthermore, he is deprived of his paternal power and of his marital authority. Conviction for crime has also the following very serious results: Either perpetual or temporary deprivation of all public rights, the suspension of the exercise of a profession or calling, and in certain cases police surveillance.

In every case some of these results follow the conviction as a matter of course, according to the terms of the law, and it is not necessary that they be designated in the sentence. Thus, whoever is sentenced to *reclusion* for thirty years, is subject as of course to special police surveillance for ten years after the

expiration of his sentence. On conviction of certain crimes, the criminal is under a sort of guardianship during the period of his punishment and is subject to the regulations of the civil law in regard to guardianship.

A member of parliament convicted of a crime loses his legislative office. In certain cases, it is true the judge himself may add to the criminal punishment certain results pertaining to the civil law; as for instance, deprivation of paternal and marital rights during the imprisonment. For certain crimes against the character or honor of a person or of a family, the prisoner may be condemned to pay a certain sum by way of damages to the party injured, even if the act has not caused a pecuniary damage.

Moreover, the sentence of a foreign court can produce various results, as the deprivation of public rights, as well as deprivation of other civil rights. If an Italian has been sentenced in a foreign country for a crime committed there, and which, if committed in Italy, would have deprived him of public or any other civil rights, the Minister of Justice can bring the matter before the judicial authorities in order to obtain a declaration that the foreign sentence shall have the same effect in Italy in this respect against the prisoner. The latter may, however, always demand that the judgment rendered against him in a foreign court shall be investigated by the courts of the kingdom.

This innovation is well worth noting. The legislator does not carry the foreign penal sentence into execution in Italy. He does not even assimilate it to the sentence rendered by the Italian court so as to give it the same effect in regard to civil incapacity, but he does provide that one who has been found guilty of a crime, which, according to Italian law, would produce a deprivation of certain civil rights, may be condemned to that deprivation by virtue of a judgment rendered in a foreign court. This is an homage paid to foreign jurisprudence. When it is administered with all the guaranties of procedure recognized in a civilized country, a criminal, convicted in a foreign country, cannot complain if the same civil incapacities are visited on him as would follow from a condemnation in an

Italian court. He cannot, for example, be a guardian, whenever he would be incapacitated from holding that position in case of a conviction in Italy. If he has been unjustly condemned, he may demand that the foreign judgment be reviewed by the Italian court.

The 5th, 6th, 7th and 8th parts determine the conditions under which any particular crime can be committed, and of all the rules to be observed in establishing guilt and the circumstances which either exclude guilt or diminish the degree thereof.

The problem of guilt is treated in the Italian courts in such a way that without considering a crime as a fatality, and the necessary result of certain inherent elements in the physical or psychological life of a man, and without considering repressive justice as a brutal conflict between society and the prisoner, the legislator has still taken account of the progress of moral science and natural science in determining both the question of guilt itself and of the gradations of every criminal act, both as to quality and as to quantity. The principle of the freedom of human action is admitted as the foundation and the condition of criminal responsibility. The act of an individual who has both conscience and liberty of action is not, however, considered as absolutely and necessarily voluntary. On the other hand, the commission of certain voluntary acts is punished, even though consequences are not intended, if they could and should have been foreseen and avoided. Criminal responsibility, however, is considered as non-existent, if both criminal intent and the freedom of action is wanting.

Moreover, the guilt is considered as modified in a greater or less degree if the freedom of action is in any way weakened.

Criminal responsibility exists in persons above the age of nine years. For any criminal act of a minor under that age, the presiding Judge may order his detention in an institution for education and correction until he shall have arrived at the age of majority.

This may also be done if the prisoner is under the age

of fourteen years, if it is established that he cannot properly discriminate between right and wrong.

Criminal responsibility exists, unless at the moment of the commission of the act the actor is in such a state of mental weakness that he has neither the knowledge of what he is doing nor freedom of action. The judge may always in such case send the prisoner to the proper authorities, if he considers it dangerous to allow him to go free. He may order the irresponsible prisoner confined in the insane asylum.

The very uncertain doctrine of irresistible force is eliminated from the new Code. This in the Sardinian Code was the foundation of non-responsibility. It gave rise to many difficulties and to many arbitrary applications of the rule. The law is now clear and exact. The act is not punishable if the prisoner has no knowledge of it and no freedom to act at the moment of its commission. If there be not a total absence of knowledge and freedom of action, and if the act be not entirely a voluntary one, the degree of guilt may be lessened but not denied, and the actor is proportionately responsible and punishable therefor, the punishment, however, being lessened.

Accidental drunkenness is an excuse. Voluntary drunkenness is ground for a semi-responsibility, if it be not directly connected with the crime itself. That is to say, if the criminal has not become drunk in order to facilitate the execution of his act or to furnish an excuse for it. A legal justification, for what would otherwise be a criminal act, is the decree of the law and the order of competent authority. So, too, a legitimate self-defence, and a state of necessity.

The obedience which is due to a Superior, ecclesiastic, may justify the actor, provided that the order given by the priest was in accordance with his functions. But whoever in such permissible acts exceeds the reasonable limits imposed by the law, the authorities, or by legitimate defense, or by a state of necessity, is punishable.

A ground or excuse for crime is the anger resulting from an unjust provocation and the passion caused by an intense grief, which is itself the result of an injustice. Further, a crime committed against another person than him against

whom the act was directed, old age, deafness and dumbness, each as a ground of excuse may operate to diminish the degree of guilt. The same result follows, when under certain special circumstances the responsibility of the person has been lessened.

One of the points which gave rise to the greatest discussion was punishment in the case of the commission of a second crime. Two theories exist in Italy on this point. Some agree with the principle of the French Code of 1810 and the Sardinian Code of 1859, according to which a *recidiviste* is one, who after sentence for a specific crime, commits another crime. The other view is based on the principle of the German Code since 1839 and the Code of Tuscany of 1853. According to these, the repetition of a crime was a ground for additional criminal responsibility, but this condition was not considered as existing except under the following three conditions :

1. If a new crime were committed after the expiration of the punishment inflicted for the preceding crime.
2. Within a specified time after such completion, and
3. If it were the same crime, or at any rate the same kind of a crime (*in eodem crimini vel in eodem delictorum genere.*)

The Italian Legislature has adopted the eclectic system.

1. It establishes the general conditions of a *recidive*, that is, the repetition of crime, then it determines the consequences thereof; looking both to the generic repetition, according to the theory of the Sardinian Code, and to the specific repetition of the Tuscan Code; that is, looking both to the commission of any new crime and also to the repetition of the same crime.

The general conditions are, 1. that the new crime be committed after the sentence of condemnation. 2. That it be committed within ten years from the day that the punishment is finished, or that the sentence of condemnation has become null and void. If the criminal had been condemned the first time to a punishment of at least five years' imprisonment; and if the punishment did not exceed five years, then within five years from the same period.

As to the generic repetition, that is to say, when the criminal has committed any new crime whatsoever, he cannot be punished with less than the punishment fixed for the new crime; but, in cases of specific repetition, that is to say, when the new crime is of the same nature as the former crime, the punishment is then increased. The Code itself determined what crimes are to be considered as of the same nature.

The last part of Book I. gives the grounds of the extinction of the penal action or punishment. These are the death of a prisoner, pardon, amnesty, *indulti*, the pardon of the injured party, if his complaint is the condition of the prosecution, the statute of limitation, the rehabilitation, voluntary *oblation*. This is applicable only to offenses for which the punishment does not exceed 300 francs fine. The prisoner can stop all further prosecution by paying into court the maximum fine and the costs of the prosecution.

Book II. of the Code contains the special rules in regard to each particular crime according to its nature. Crimes are classified as follows :

1. Crimes against the security of the state ;
2. Against liberty ;
3. Against the public administration ;
4. Against the administration of justice ;
5. Against public order ;
6. Against public credit ;
7. Against public security ;
8. Against good morals, family rights ;
9. Against the person ;
10. Against property.

The Legislature defines precisely the essential elements necessary to constitute each of these special crimes, according to an objective juridical view of the right, against which the act has been directed. Those crimes which have the same objective character are found under the same head. Those whose character is such that they cannot be classified under a special head are placed under the same subdivision as those to which they are most analagous, and those, finally, which are directed against various rights are classified according to

the highest right which is violated in their commission. Thus, for example, under the eighth head, are united the laws for the protection of good morals and family order, and the crimes are divided into six principal groups: (a.) carnal violence, corruption of the minor and offenses against virtue; (b.) rape; (c.) fornication; (d.) adultery; (e.) bigamy; (f.) substitution of children and abortion.

We cannot in this brief paper give even the general features of the second book. We can indicate merely several points. Under the head of crimes against liberty, are found those penal sanctions which aim to guarantee the legitimate liberty of man in its principal manifestations. There are to be found crimes against political liberty; against freedom of religious worship; against individual liberty; against the sanctity of the home; against the freedom of secret postal and telegraphic communication, and against the freedom to work. Under the third head, crimes against public administration, are to be found the acts of a religious minister, who, in the exercise of his functions, reflects on or condemns publicly the institutions and the laws of the state or the acts of the authorities, or who by virtue of his position, incites to a condemnation of the institutions, the laws or the acts of the authorities, or to a disregard of the laws and public duties. These provisions are due to the necessity of preventing Catholic priests from carrying on a free propaganda against the national Italian interests in favor of the Pope, who considers himself to have been arbitrarily deprived of his temporal power. These sections encountered the greatest opposition in parliament from those who are ever aiming to set up and protect the unjustifiable pretensions of the Pope. There were petitions from the clergy, priests and bishops against these articles, but the liberal party carried the day, and the proposed sections were enacted into laws.

The Code punishes adultery, even if committed by a husband. Against this there was a lively opposition. Many wished to substitute for a criminal punishment the possibility of divorce, but as yet divorce is not possible in Italy. A draft of the divorce law has been submitted to Parliament, but the fight is a lively one. The Code in punishing adultery of

the husband, punishes not only intercourse with a concubine in the family house, but even if the husband notoriously carries on his practices elsewhere. Punishment of husband and wife is the same, as also is that of the accomplice of the wife ; the concubine however receives a lesser punishment.

So, too, the repression of duelling encountered a lively opposition in Parliament. Nevertheless, it became a law, and the penalty therefor was made very severe, but as a matter of fact it is never applied in practice. The Code is directed not only against the completed duel, but even against a challenge, though not accepted.

Witnesses and seconds are punished, except where they have endeavored to prevent the encounter. The punishment may even be more severe, for one who acts as a substitute for the party directly interested in the duel. Yet, notwithstanding all these severities, duels are matters of daily occurrence in Italy, and the statements of the witnesses are published by the press, and thus, these sections have become dead letter laws.

The third book treats of offenses. It is divided into four parts :

1. Offenses concerning public order.
2. Offenses against public security.
3. Offenses against public morals.
4. Offenses concerning protection of public property.

The word contravention or offenses in the new Code does not signify simple violation of police regulations. An offense is an act which is not repressed as a direct violation of a right, but in the interest of individual safety or of public security, the aim being a preventive one. It is difficult to give a general idea of this book, which comprises a great series of acts in connection with the laws and regulations which treat of all offenses against the state and of individual security.

Such are the characteristic principles of Italian penal legislation in force since January 1, 1890. Naturally, the new Code has been criticised by certain persons who find it too mild in some respects and excessively severe in others. No human work is perfect ; but apart from certain criticisms of details, everyone must recognize that as a whole the new

penal Italian code is a legislative enactment of great value, because it has established the fundamental bases of the penal system, taking into consideration the ends and aims of human justice, the moral condition of society at the present time and the progress of civilization.

Future amendments which may be made will never diminish the value which it has as a legislative synthesis of the fundamental principles of penal law according to the progress of modern science.

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