

THE LAW AS EDUCATIONAL MEANS, ON THE BACKGROUND OF SOCIAL FUNCTION OF LAW ITSELF

Dear Delegates, first of all, I like to give you the augural regards from International Association of Criminal Law, whose General Secretary entrusted me with this very pleasing task, soon after our Congress of last August in New York, on the subject:

«The prevention and the repression of drug abuse and its trade».

In my opinion, the problem of penalty, more than other juridical problem, wants a philosophic reply: it is, in truth, a basic problem of philosophy; so, it must be resolved according to the ethic principles of the happy medium between individual interest and social interest.

If it is true, the function of law, in the field that we are examining, must be put in action as an effective help to human person, as it aims to praiseworthy purpose of his rehabilitation, or better to his freedom.

The main problems dealt with during the aforesaid Congress about the drugs, from the juridical point of view, may be formulated like this:

a) must be enforcement efforts preferably directed towards any particular type of drug activity: importe, production, manufacture, possession or consumption?

b) has legislation to make a distinction among drug offenses, for purpose of imposing penalty?

The third very important question, put during the same meeting, concerned the problem of the crimes, perpetrated by drug addicts while under the influence of drug: may said problem be solved by the defense of incapacity, or mental illness, or the defense of intossication?

After the reporters of the numerous delegations about the experiences and legislative programs of their own Nations, the Congress considered:

1) that prison type treatments ist he least successfull; on the con-

trary, the experimentation with treatment programs in lieu of prison (like the «probation», for example) seemed to be called for.

2) that the status of drugs adiction cannot be subject to punishment; and so forth.

With reference to the question: «what is the function of education in the treatment and prevention of drug abuse?» the delegates, at last, considered that «national legislation should be reviewed, to determine wether treatment modalities for drug dependent persons could be prescribed, in lieu of inappropriate retributive sanctions or of classical mental hospitalization.»

In front of this question, as a member of the Italian delegation, I affirmed during New York Convention, and I now affirm, that, in my opinion, the function of law must be directed towards persuasion, according to a guide idea, very able to fecundate the mind must the heart, by placing on the first foundation the ideals, irradiating from the Christian sense of life: in this background, the repression must become, itself, rehabilitation-Educational proces-and law's formation and execution are not two different phenomena: on the contrary, both of them must be anchored to primary spiritual and material importance of human person, as professor Lacambra said yesterday, acutely, in his report.

It seems to me that law itself must be used in order to smooth the way to educational action, and seen as a very educational means, especially in the struggle between Authority and Liberty, a very dramatic conflict in the penal field.

In conclusion, law must not be a guillotine, but one must conceiver its a psychological and norme support for him, who has committed offence, while law, at the same time, defends Society: in my opinion, the function of penal law is based, entirely, upon this right balance; this is the profound meaning of the principle which also the Constitution of Italian Republic has decreed, that the execution of penalty must be humanitarian, and must aim to the re-education of condemned people, and to his regeneration for a social living.

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LA ACCIÓN DEL ABOGADO EN LA VIDA DEL DERECHO

Yo quiero proponer al profesor Ruiz Giménez, que es también un gran abogado, esta pregunta:

«¿Puede ser la acción de los abogados una contribución válida y determinante por la vida del derecho?».

Yo prefiero creer que es muy errado e injusto el pensamiento que el abogado es un matador de la ley y un abanderado de la injusticia. Según la tradición italiana, que sale de Giambattista Vico, el abogado lleva su toga al mismo título, que la llevan el juez y el catedrático de filosofía del derecho y de derecho positivo. En el propio cliente, el abogado, ve a la persona humana en todo su valor: él no la ve como un objeto con un precio económico; además el abogado se pone al nivel de educador, no solamente de defensor. El abogado aclara a la conciencia del hombre con el sentido de la objetividad, de la justicia, y por esto se hace abanderado, protagonista de su exacta aplicación *in actu exercito*, realizando a la certeza de la relación jurídica concreta, la cual es el derecho en su verdadera vida, y, por concluir, en toda suya substancia filosófica y en toda suya significación moral y social.

Yo deseo terminar este discurso, recordándome y recordando a usted de tres nombres de egregios maestros, los cuales me han honrado con su afectuosa consideración, y constituyen ejemplos de moralidad, de socialidad, de altísimo ingenio en el pensamiento filosófico-jurídico, sobre la cátedra y en la profesión de abogado, ofreciendo un testimonio viviente de síntesis de la teoría y de la práctica del derecho: Francesco Carnelutti, Orazio Condorelli, Alfredo De Marsico.

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