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A Century of Criminal Law and Criminology

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CENTENNIAL VOLUME

A CENTURY OF CRIMINAL LAW AND CRIMINOLOGY

FOREWORD

Amy DeLine* & Adair Crosley**

When the First National Conference on Criminal Law and Criminology drew to a close, its delegates resolved to establish the first English-language periodical “devoted to the scientific study of the criminal law and criminology.”¹ Only months later—and exactly one century ago—the seminal pages of *The Journal of Criminal Law and Criminology* (*Journal*) were published. This, the hundredth volume of the *Journal*, is committed to honoring the *Journal*’s history and, more generally, the past one hundred years of criminal law and criminology.

As Jennifer Devroye recounts in her article, *The Rise and Fall of the American Institute of Criminal Law and Criminology*, the organizers of the National Conference, particularly then-Dean of Northwestern Law, John H. Wigmore, hoped to modernize criminal law.² To that end, Dean Wigmore, prominent legal and sociological scholars, practicing lawyers, jurists, and government officials joined together in June 1909 to celebrate the fiftieth anniversary of the Northwestern University School of Law and created a

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¹ AM. INST. OF CRIMINAL LAW & CRIMINOLOGY, PROCEEDINGS OF THE FIRST NATIONAL CONFERENCE ON CRIMINAL LAW AND CRIMINOLOGY 219 (1910).

² Jennifer Devroye, *The Rise and Fall of the American Institute of Criminal Law and Criminology*, 100 J. CRIM. L. & CRIMINOLOGY 7 (2010).

plan for criminal justice reform.³ Over the course of two short days, delegates discussed topics including sentencing and prison reform, wrongful arrests, unlawful police interrogations, the constitutional rights of the accused, trial procedure, and, significantly, the promotion of the systematic study of criminal behavior and the criminal justice system.⁴ In May 1910, the final item on this list came to fruition when the *Journal* published its first issue.

Those early pages of the *Journal*, like the National Conference itself, focused wholeheartedly on criminal justice reform. In the article “A Plan for the Reorganization of Criminal Statistics in the United States,” for instance, Louis N. Robinson criticized the state-based method of collecting crime statistics as inefficient and incomplete and recommended a supplementary federal system.⁵ Edward Lindsey likewise condemned a bill before Congress that would have created a criminology laboratory within the Department of Justice.⁶ And a third article, “Technicalities in Procedure, Civil and Criminal,” focused on the need to simplify the federal and state court systems.⁷

The *Journal* published five more issues in its inaugural year, and, throughout those pages, reform remained the central theme. One author called for services to aid ex-felons as they re-entered society.⁸ Others listed ways to improve the value and legitimacy of expert testimony in criminal

³ AM. INST. OF CRIMINAL LAW & CRIMINOLOGY, *supra* note 1, at 1. Prominent legal scholar and eventual Dean of Harvard Law, Roscoe Pound, called the Conference into session. In his opening remarks he noted the novel “mode of celebrating an anniversary” that Dean Wigmore had come up with:

[i]t seemed to Dean Wigmore . . . instead of the conventional anniversary celebration, an attempt should be made to signalize this occasion by undertaking a public service, a service to society and a service to the law; and it seemed that no field of interest, legal or social, afforded a better opportunity for such a service than the administration of punitive justice in this country.

Id.

⁴ *Id.* at xiii-xx. The Conference had over 135 discussion items on its initial agenda, which was later whittled-down to those issues attendants agreed were the most pressing. *Id.*

⁵ Louis N. Robinson, *A Plan for the Reorganization of Criminal Statistics in the United States*, 1 J. AM. INST. CRIM. L. & CRIMINOLOGY 44 (1910).

⁶ Edward Lindsey, *The Bill to Establish a Criminological Laboratory at Washington*, 1 J. AM. INST. CRIM. L. & CRIMINOLOGY 103 (1910). Lindsey believed that the Department of Justice was unacquainted with the scientific methods of sociological investigation and thus ill-equipped to run such a laboratory. He suggested that the American Institute of Criminal Law and Criminology (the permanent body established at the First National Conference on Criminal Law and Criminology) would be a better home for it. *Id.*

⁷ John Davison Lawson, *Technicalities in Procedure, Civil and Criminal*, 1 J. AM. INST. CRIM. L. & CRIMINOLOGY 63 (1910).

⁸ Amos W. Butler, *Treatment of the Released Prisoner*, 1 J. AM. INST. CRIM. L. & CRIMINOLOGY 403 (1910).

cases.⁹ And still others proposed procedural,¹⁰ statutory,¹¹ and administrative changes.¹²

The *Journal* continues to provide a forum to advance changes in the criminal justice system. Sentencing reform, for instance, has generated a prodigious body of work.¹³ Prison reform has too; numerous articles have advocated for the rights of prisoners,¹⁴ improvements in the physical conditions and social services available in prisons,¹⁵ and, recently, controlling the costs associated with an exploding prison population.¹⁶ But perhaps the most important reform the *Journal* helped along was the establishment of a public defender system. Indeed, articles supporting the public defender system span the *Journal's* century. The first, "Public Defense in Criminal Trials," appeared in the fifth issue.¹⁷ Scott Phillips's "Legal Disparities in the Capital of Capital Punishment" in the ninety-ninth volume is the most recent.¹⁸ In the pages between, various authors indefatigably argued for public defenders, often relying on state and local examples¹⁹ and statistics²⁰ to evidence the need for indigent defense systems nationwide.

⁹ Edward J. McDermott, *Needed Reforms in the Law of Expert Testimony*, 1 J. AM. INST. CRIM. L. & CRIMINOLOGY 698 (1910); William Schofield, *Medical Expert Testimony: Methods of Improving the Practice*, 1 J. AM. INST. CRIM. L. & CRIMINOLOGY 207 (1910).

¹⁰ See, e.g., M.C. Sloss, *Reform of Criminal Procedure*, 1 J. AM. INST. CRIM. L. & CRIMINOLOGY 705 (1910).

¹¹ See, e.g., William P. Lawlor, *Needed Reforms in Criminal Law and Procedure*, 1 J. AM. INST. CRIM. L. & CRIMINOLOGY 877 (1910) (arguing for changes to the federal Constitution and statutory law, and similar changes to California's laws).

¹² See, e.g., Richard Sylvester, *Principles of Police Administration*, 1 J. AM. INST. CRIM. L. & CRIMINOLOGY 411 (1910). Interestingly, the author was the Chief of Police for the District of Columbia.

¹³ See, e.g., Robert M. Carter & Leslie T. Wilkins, *Some Factors in Sentencing Policy*, 58 J. CRIM. L., CRIMINOLOGY & POLICE SCI. 503 (1967); Albert H. Hall, *Indeterminate Sentence and Release on Parole*, 2 J. AM. INST. CRIM. L. & CRIMINOLOGY 832 (1911); Erik Luna, *Gridland: An Allegorical Critique of Federal Sentencing*, 96 J. CRIM. L. & CRIMINOLOGY 25 (2005).

¹⁴ See, e.g., Barry M. Fox, *First Amendment Rights of Prisoners*, 63 J. CRIM. L., CRIMINOLOGY & POLICE SCI. 162 (1972). In fact, the entire second issue of this volume was a symposium issue dedicated to prisoners' rights.

¹⁵ See, e.g., F. Emory Lyon, *The Housing of Prisoners*, 8 J. AM. INST. CRIM. L. & CRIMINOLOGY 739 (1917).

¹⁶ See, e.g., Thomas B. Marvell, *Sentencing Guidelines and Prison Population Growth*, 85 J. CRIM. L. & CRIMINOLOGY 696 (1994).

¹⁷ Maurice Parmelee, *Public Defense in Criminal Trials*, 1 J. AM. INST. CRIM. L. & CRIMINOLOGY 735 (1910).

¹⁸ Scott Phillips, *Legal Disparities in the Capital of Capital Punishment*, 99 J. CRIM. L. & CRIMINOLOGY 717 (2009).

¹⁹ See, e.g., Kenneth Wynne, *Public Defenders in Connecticut*, 17 J. AM. INST. CRIM. L. & CRIMINOLOGY 359 (1926).

In addition to advancing particular causes, the *Journal* has created a space for countless well-known authors to air their ideas on reform. Booker T. Washington, for example, wrote an article in 1912, “Negro Crime and Strong Drink,” advocating prohibition.²¹ A series of articles by J. Edgar Hoover in the early 1930s spoke to the changes he was instituting at the FBI.²² Two speeches by Chief Justice Warren Burger appeared three decades later in the *Journal*’s fifty-eighth and sixty-first volumes. The first focused on rectifying the inefficiency of criminal trials,²³ and the second implored state attorneys general to create access to state courts for aggrieved prisoners in order to reduce the burden of habeas corpus petitions on the federal court system.²⁴ The fifty-eighth volume also included Robert F. Kennedy’s plan to make police administration better and improve the trial, probation, incarceration, and post-incarceration processes.²⁵ All were reforms Senator Kennedy believed were “vital to any effort aimed at reducing this nation’s high rate of crime.”²⁶ Last, but certainly not least, Northwestern University Law School’s own alumni and faculty—including the *Journal*’s founding fathers, Dean Wigmore and Roscoe Pound; former Editors-in-Chief James W. Garner, Robert H. Gault, and Fred Inbau; federal jurists Abner Mikva, Joel Flaum, and Marvin Aspen; Illinois Governor Jim Thompson; and many, many others—are counted among the *Journal*’s distinguished authors.²⁷

²⁰ See, e.g., Walton J. Wood, *Necessity for Public Defender Established by Statistics*, 7 J. AM. INST. CRIM. L. & CRIMINOLOGY 230 (1916).

²¹ Booker T. Washington, *Negro Crime and Strong Drink*, 3 J. AM. INST. CRIM. L. & CRIMINOLOGY 384 (1912).

²² J. Edgar Hoover, *Organized Protection Against Organized Predatory Crimes—Bankruptcy Frauds, III*, 23 J. AM. INST. CRIM. L. & CRIMINOLOGY 1073 (1933); J. Edgar Hoover, *United States Bureau of Investigation in Relation to Law Enforcement*, 23 J. AM. INST. CRIM. L. & CRIMINOLOGY 439 (1932); John Edgar Hoover, *International Exchange of Fingerprints*, 24 J. AM. INST. CRIM. L. & CRIMINOLOGY 664 (1933); John Edgar Hoover, *Organized Protection Against Organized Predatory Crime—National Bank Offenses, VII*, 24 J. AM. INST. CRIM. L. & CRIMINOLOGY 655 (1933); John Edgar Hoover, *Organized Protection Against Organized Predatory Crimes—White Slave Traffic, V*, 24 J. AM. INST. CRIM. L. & CRIMINOLOGY 475 (1933).

²³ Warren E. Burger, *Paradoxes in the Administration of Criminal Justice*, 58 J. CRIM. L., CRIMINOLOGY & POLICE SCI. 428 (1967).

²⁴ Warren E. Burger, *Post Conviction Remedies: Eliminating Federal-State Friction*, 61 J. CRIM. L., CRIMINOLOGY & POLICE SCI. 148 (1970).

²⁵ Robert F. Kennedy, *Crime in the Cities: Improving the Administration of Criminal Justice*, 58 J. CRIM. L., CRIMINOLOGY & POLICE SCI. 142 (1967).

²⁶ *Id.* at 153.

²⁷ See, e.g., Fred E. Inbau, *Legal Pitfalls to Avoid in Criminal Interrogations*, 40 J. CRIM. L. & CRIMINOLOGY 211 (1949); Abner J. Mikva, *Victimless Justice*, 71 J. CRIM. L. & CRIMINOLOGY 189 (1980); James R. Thompson & Gary L. Starkman, *The Citizen Informant*

All of this is to say that as the criminal justice system evolved over the past century, the *Journal* was there, influencing that evolution with groundbreaking authors and articles. It is also to say that while the *Journal* itself has transformed remarkably in the past century (including three name changes,²⁸ a switch in the 1970s from a professional staff to a student-run editorial board, and the advent of online publication), the commitment to its original mission to bring together those who seek “modern solutions” to the “most important problems” has not faltered.²⁹ It is our sincerest hope that today, one hundred years after the *Journal's* founding, the Centennial Volume likewise embodies that august purpose.

To this end, the forthcoming pages not only reflect on the last century but serve as a springboard for the next one. Centennial Sections in the first two issues focus on the history of the *Journal* itself. Devroye's piece, which opens the volume, traces the *Journal's* origins in the National Conference and the American Institute of Criminal Law and Criminology that emerged. Reprints of historic articles in the second issue—including some of the articles highlighted herein—provide a snapshot of the *Journal* and the criminal justice system through the ages. Both of these issues include new scholarship to ensure that, as we take time to honor the *Journal*, we do so in a way that does not neglect its longstanding commitment to advancing reform.

The third issue of this volume—the Symposium issue—includes more than a dozen articles that consider the last century's developments and suggest improvements for the future. These pieces, written by leading scholars and presented at the *Journal's* Centennial Symposium in January 2010, each tackle a specific aspect of criminal justice. Some of the articles, in fact, address the very topics that arose at the First National Conference: sentencing, imprisonment, wrongful convictions, and the constitutional

Doctrine, 64 J. CRIM. L. & CRIMINOLOGY 163 (1973); John H. Wigmore, Editorial, *A New Mode of Identifying Criminals*, 17 J. AM. INST. CRIM. L. & CRIMINOLOGY 165 (1926).

²⁸ When Northwestern University School of Law took over responsibility for publishing the *Journal* in 1941, its name was changed from *The Journal of the American Institute of Criminal Law and Criminology* to *Journal of Criminal Law and Criminology*. See 32 J. CRIM. L. & CRIMINOLOGY 1 (1941). The *Journal's* editors then changed its name, again, to *The Journal of Criminal Law, Criminology, and Police Science* to commemorate the University's hundredth anniversary. See Editorial, *Northwestern University's Centennial*, 42 J. CRIM. L., CRIMINOLOGY & POLICE SCI. 1 (1951). This name lasted only briefly, however. When the separate section on police science was eliminated in the sixty-fourth volume, the *Journal* was renamed *The Journal of Criminal Law and Criminology*. Editorial, 64 J. CRIM. L. & CRIMINOLOGY 1 (1973).

²⁹ James W. Garner, Editorial, *Plan of the Journal*, 1 J. AM. INST. CRIM. L. & CRIMINOLOGY 5, 6 (1910).

rights of the accused. The fourth issue concludes the Centennial Volume with responses to these articles and additional new scholarship.

One hundred years ago, the *Journal* came into existence to fill a void. It was to be the first American periodical on criminal law and criminology. While it is no longer the only English-language journal dedicated to criminal justice, it remains the leader of the pack. It continues to provide, as it did at the outset, *the* forum for all those concerned “directly or indirectly with the administration of punitive justice.”³⁰ One hundred years from now, we believe it will continue to do so.

³⁰ *Id.* at 7.