NATIONAL CONFERENCE OF STAFF MEMBERS OF CRIMINAL LAW DEPARTMENTS OF THE UNIVERSITIES

In 1964 members of staff of the criminal law departments of all the universities in Poland met together in Warsaw. This congress was organized by the Criminal Law Department of Warsaw University, and in accordance with the programme the first day was devoted to an important problem that conies into the general part of the criminal law—causal connection.

This choice of subject would seem to have been a most appropriate one, for the problem is one of immense theoretical and practical importance. The multiplicity of theories on causal connection surely indicates most forcibly how difficult it is to reach a satisfactory solution of this problem. Then when we take into account the fact that in nearly every criminal case the judge must state the existence or non--existence of a causal connection between the behaviour of the accused and the result, it becomes clear how valuable and necessary are efforts aimed at assisting the judge to solve this question.

The discussion was based on a monograph by Leszek Lerne11, professor of Warsaw University, which was published not long ago, in 1962. In this large tome, consisting of almost 400 pages, the author reviews and criticizes previous theories on causal connection both in bourgeois and in socialist literature. The author does not, of course, confine himself to criticism, but in the second part of the book outlines his own conception.

Professor Lernell's theory is based on the assumption that neither in the criminal law nor in any of the social sciences is it possible to do without evaluation, selection. Even within the sphere of causal connection itself, selection is necessary. It is inadequate to say that we begin the process of analysis from the first link in the chain, which we take to be the person's behaviour. According to Professor Lernell it is also necessary to define his behaviour. It must be an act of free choice—in the terminology adopted by the author we have to do in this case with a "voluntary act." But we cannot regard every voluntary act as relevant from the aspect of analysis of causal connection. The voluntary act—and this is the focal point of Professor Lernell's theory—must be socially dangerous. Therefore in judging whether a given causal connection forms the basis of criminal responsibility, one should examine its first link—the person's behaviour—from the point of view of the social danger it represents.

The first paper was given by Professor Władysław Wolter, who holds the Chair of Criminal Law at the Jagellon University in Cracow. For many years now the speaker has held the view which he expressed in his paper, namely, that in the criminal law all theories of causality, so far as they differ from the ontologically purest theory of equivalence, are nothing else than... a methodologically inadmissible adjustment of causality to fit in with legal responsibility. The speaker included in the theories of this category not only the theories of so-called adequate cause, but also the theory of Professor Lernell. According to Professor Wolter, from the ontological point of view causality is an indispensible condition of responsibility, but by no means a sufficient condition. For the social harmfulness (illegality) of the act should be taken into account. The first condition cannot be a substitute for the second, and if it tries to replace it we have a conglomeration two different planes; it ceases to be causality because it becomes a link in responsibility, and it ceases to be a link in responsibility because it becomes causality! Therefore Professor Wolter does not see the point of introducing to the category of causal connection the element of "social

harmfulness," which in his view comes into play through the statutory and non--statutory contratypes. Thus evaluation within the sphere of causal connection is not at all necessary.

The same speaker placed great weight on the question of "the causality of inaction." Here, too, the views of Professor Lernell and those of the speaker were diametrically different. Professor Lernell was inclined to adhere to a view accepting the existence of a causal connection between inaction and result, whereas Professor Wolter was of the opinion that there can be no result from nothing, which led him to reject a causal connection in offences that took place through neglect.

Professor Wolter's paper was followed by a long and lively discussion, in which more than 20 speakers from all the universities took part.

The speakers were unanimous in praising Professor Lernell's book, and in particular the integrity and keenness of the argument in that part of the book which is devoted to a critical discussion of existing theories of causal connection.

The majority of those taking part in the discussion shared the author's view that with regard to criminal responsibility it is necessary to make a preliminary selection already within the sphere of the causal connection. For it is not enough to select through contratypes (circumstances which rule out criminal responsibility) or guilt. Limitation of criminal responsibility can and should also take place by ruling out causal connection in a given case. Doubt was expressed, however, as to the propriety of introducing the criterion of socially harmful voluntary acts. It was pointed out that the concept of "social harmfulness" is a subjectively evaluated category which is difficult to define in practice. The speakers also stressed that in their opinion the criterion proposed by the author can be used not only to determine a causal connection itself as the basis of criminal responsibility, but also to solve the question of whether or not the doer of a deed shall be responsible for it in criminal law. The establishment of a causal connection would therefore be equivalent to the establishment of criminal responsibility. Thus, as one of the speakers pointed out, Professor Lernell's theory is not a theory of causal connection, but a theory of criminal responsibility.

A difference of opinion among the speakers was caused, however, by a problem referred to above, namely that of the causality of inaction. Representatives of the so-called "Cracow school" (the followers of Professor Wolter), are traditionally opposed to accepting the existence of causality between inaction and result. This is the view they expressed in the discussion. Most of the representatives of the other universities, however, supported the view propounded by Professor Lernell in his book.

At the end of the discussion the author of the book, Professor Lernell, gave a long speech in which he dealt with a number of problems raised by the previous speakers. This again was followed by a lively discussion in which twenty members of various university staffs took part.

The second day of the congress was given over to the problem of research. The introductory paper was given by Dr. Jerzy Śliwowski of Toruń University. He began by drawing attention to the marked insufficiency of hours assigned to lectures on criminal law in the curriculum. As a result, in most of the universities there are no lectures on the detailed part of criminal law, and only some of the universities have lectures on some parts of the material which the professor regards as more important. In consequence complaints are often heard from practicing lawyers that law graduates have absolutely no knowledge of the legislation actually in force. The speaker expressed the view, however, that in the present situation it would be impossible to stop the lectures on fragments of the general part of the criminal law, and use this time to lecture on certain problems of the detailed part. For in spite

of everything, the duty of the university is to provide the student with a theoretical foundation which the law office cannot give him. The only solution, therefore, would be to increase the number of hours assigned to lectures on criminal law.

Dr. Śliwowski then went on to discuss the question of scripts. He declared that since it was impossible to present all the compulsory material within the course of the lectures, all the universities should be enabled to publish scripts for their students. The present situation in this respect is unsatisfactory.

The speaker then went on to the question of master's theses. According to the present regulations, the fifth and final year of the course is spent by the student almost entirely in writing his master's thesis. When the professor has accepted this thesis, the student is allowed to sit his final exams, and when he passes these he is given the degree of master of law. In the speaker's view such theses do, no doubt, give an idea of the student's worth, but rather from the point of view of his aptitude for research. But since only a fraction of the total number of graduating students proceed to a career in research, it would surely be a good idea to consider changing the present procedure by which a first degree is awarded, and to replace the thesis with a two-level examination (first written, then oral).

This paper was followed by discussion in which academics from all the university departments represented at the congress took part. Nearly all the speeches expressed the opinion that the present forms of imparting knowledge (lectures, tutorials, master's theses), are now anachronisms and should be replaced by other forms. According to many of the speakers the emphasis in teaching should be on independent work by the student in fairly small groups (of 15—20 students). These groups should be in the charge of a senior member of staff, for at present there is only negligible contact between students and professors or readers.

To many of those present, the introduction of specialization during the course seemed desirable. It was proposed that specialization might follow three main lines — criminal law, civil law, and administrative law. During the first and second year of the course the student should gain a general knowledge of the principal legal disciplines, but thereafter he should choose a special field of studies and specialize in it. For under the present system graduates are not at all properly qualified either for work in the courts or in the administrative apparatus.

During the discussion much attention was given to the problem of supplementary disciplines (e.g. penitentiary law, criminology, forensic medicine), and it was said that more hours should be given to those subjects.

Towards the end of the congress, a three-member commission was elected to study the following three problems:

— research at present being carried on by the university departments,
— the development of new research cadres,
— the curriculum of the criminal law course.

It was also decided that next year's congress should take place in Wroclaw.

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