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An International Code for the Punishment of War Crimes

Pius XII

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AN INTERNATIONAL CODE FOR THE PUNISHMENT OF WAR CRIMES *

HIS HOLINESS, PIUS XII

IT SEEMS to Us that very rarely has so important and select a group of jurists and specialists in the science and practice of law, from the whole world, been gathered together in the house of the Pope, as that which we see assembled around Us today. Our joy in wishing you welcome, gentlemen, to Our home is all the greater for it. This greeting is addressed to each of you individually and to the whole of your Sixth International Congress of Penal Law, which during these recent days has been extremely active. We take a deep interest in the results of your Congress, and We feel Ourselves obliged to make some considerations of principle concerning its objectives and resolutions. We hope, in so doing, to respond to the wishes expressed from among you to Us.

A peaceful and ordered social life, whether within a national community or in the society of nations, is only possible if the juridical norms which regulate the living and working together of the members of the society are observed. But there are always to be found people who will not keep to these norms and who violate the law. Against them so-

*The following is a translation of an address in French delivered by Pope Pius XII to the Sixth International Congress of Penal Law on October 3, 1953. N. C. W. C. News Service.

ciety must protect itself. Hence derives penal law, which punishes the transgression and, by inflicting punishment, leads the transgressor back to the observance of the law violated.

States and peoples have each their own penal law; these laws are made up of a multitude of parts; between them there always remains a greater or less diversity. But since in our times people easily change their place of residence and frequently pass from one state to another, it is desirable that at least the most serious crimes should have a sanction everywhere and, if possible, of an equal severity, so that the culprits may nowhere be able to escape or be shielded from the punishment of their crimes. It is an agreement and reciprocal support of this kind between nations that international penal law strives to realize.

If what We have just said holds good in normal times, its urgency is particularly evident in time of war or of violent political disturbances, when civil strife breaks out within a state. The offender in political matters upsets the order of social life just as much as the offender in common law: to neither must be allowed assurance of impunity in his crime.

To protect individuals and peoples against injustice and violations of the law, by formulating an international penal code, is a lofty aim, to the attaining of which We wish to contribute by addressing a few words to you.

I

We will speak first of all of the importance of international penal law, as brought out by the experience of the last decades.

This experience covers two world wars with their repercussions. During these changes, both within countries and between one country and another, and when totalitarian political regimes were developing without check, deeds were done, governed only by the law of violence and success. We were witnesses then of a cynical attitude which would be unthinkable in normal times, in attaining the end proposed

and in neutralizing the enemy, who was in general hardly considered as a human being. It was not blind natural forces but men who, now in savage passion, now in cold reflection, brought unspeakable sufferings, misery and extermination to individuals, communities and to whole nations.

Those who acted thus felt secure, or tried to procure for themselves the assurance, that no one could ever or in any place call them to account. If fortune turned against them, it would be always possible for them to flee to a foreign country. Such was the attitude of soul of those who acted as criminals themselves, or, presuming on their power, commanded and forced others to act, or let them commit evil, even though they could and were obliged to restrain them from it.

All this created among those involved the impression that no law existed, of a lack of protection, of being the playthings of an arbitrary will and of brute force. But a demand also made itself felt: that all the culprits of which We have just spoken, without consideration of persons, should be obliged to render account, to suffer the penalty, and that nothing should be allowed to save them from the chastisement of their acts, neither success nor even the excuse of an "order received from a higher authority."

It is the spontaneous human sense of justice that demands a sanction, and which perceives that the threat of an universally applicable penalty is a guarantee, not to be neglected even though not infallible, against such wrongdoing. This sense of justice has, on the whole, found a sufficient expression in the penal code of states, for what concerns offenses of common law; to a lesser degree, in the case of political violence within states; and hardly at all, up to the present, for acts of war between states and peoples.

But a balanced sense of justice is no less clear and imperious in its demand for sanctions in the last-mentioned case than in the others, and if it is satisfied, it will be equally strong in its restraining force. The certitude, confirmed by treaties, that one must render an account—even if the criminal act succeeds, even if the offense is committed abroad, even if after having committed it one flees to a foreign

country—this certitude is a guarantee not to be underestimated. The consideration of these circumstances is calculated to make one understand, even at first sight, the importance of an international code of penal law. For, in fact, we are not dealing here with the simple demands of human nature and of moral duty, but with working out clearly defined coercive juridical norms which, in virtue of formal treaties, may become obligatory for the contracting states.

II

In the second place We will speak of the categories of crimes which will concern international penal law.

If already the common penal law must apply the principle that it cannot take as its object all acts against morality but those only which seriously threaten good order in the life of the community, this same principle deserves very particular attention in the construction of an international system of penal law (cfr. St. Thomas of Aquin. *Summ. Theol.* 1. 2ae. q.96 a.2 and 1). It would be an undertaking doomed beforehand to failure to try to set up international agreements covering all violations of law, however slight. In this matter, attention must be directed only to crimes that are particularly serious, even only, We might say, to those which are extremely serious. It is only for such crimes that it is possible to establish a uniform penal code between states.

Besides, the choice and definition of the crimes to be punished must be based on objective criteria: namely on the serious nature of certain crimes, and on the necessity to take measures precisely against them. In the light of these two considerations it is of paramount importance to consider the following points:

- (1) the value of the good attacked; it should be something of the highest importance;
- (2) the force of the inclination to violate the good;
- (3) the intensity of the evil will which is normally exercised when these crimes are committed;
- (4) the gravity of the perversion of juridic order, considering the person who commits the crime; for example, in

the case where those who should maintain law, themselves break it;

(5) the seriousness of the threat to the juridic order because of extraordinary circumstances which, on the one hand, increase the danger of criminal acts being attempted and, on the other, make them much more formidable in their effects. Consider, for example, extraordinary situations, such as war or siege.

Basing Ourselves on these criteria, a number of cases can be mentioned for which international law ought to establish a sanction.

In the first place, there is the crime of making a modern war which is not required by absolute necessity of self-defense, and which brings with it, as we can assert without hesitation, unthinkable ruin, suffering and horrors. The community of nations must reckon with unprincipled criminals who, in order to realize their ambitious plans, are not afraid to unleash total war. This is the reason why other countries, if they wish to preserve their very existence and their most precious possessions, and unless they are prepared to accord free action to international criminals, have no alternative but to get ready for the day when they must defend themselves. This right to be prepared for self-defense cannot be denied, even in these days, to any state. That, however, does not in any way alter the fact that unjust war is to be accounted as one of the very gravest crimes which international penal law must proscribe, must punish with the heaviest penalties, and the authors of which are in every case guilty and liable to the punishment that has been agreed upon.

The world wars through which humanity has lived, and the events which have taken place in the totalitarian states, have given rise to many other evils, at times even more serious, which a code of international penal law should render impossible, or from which it ought to free the community of nations.

Also, even in a just and necessary war, the ways of acting which would lead to victory are not all defensible in the eyes of those who have an exact and reasonable concept of justice. The mass shooting of innocent people, in reprisal

for the fault of an individual, is not an act of justice, but an injustice, sanctioned indeed by authority. One does not acquire the right to execute innocent hostages just because it is looked on as a necessity of war. In these last decades we have seen massacres out of racial hatred; the horrors and cruelties of concentration camps have been revealed to the whole world; we have heard of the "liquidation" by hundreds of thousands, of "beings not fit to live"; pitiless mass deportations in which the victims were delivered up to destitution, often along with their wives and children; force used against great numbers of defenseless young girls and women; manhunts organized among civilians in order to procure workers, or rather slaves for work.

The administration of justice has in places degenerated into an unlimited arbitrariness, whether in the methods of examination, or in the sentence, or in the carrying out of the sentence. In order to be revenged on one whose actions were perhaps morally irreproachable, they have not at times been ashamed to take action against the members of his family.

These few examples—you know that many others exist—can suffice to show what class of crimes ought to constitute the object of international agreements, which could secure effective protection, and which would indicate clearly the crimes to be proscribed, and would fix their characteristics with juridic precision.

III

The third point which calls for at least a brief mention concerns the penalties to be demanded by international penal law, about which a remark of a general nature will suffice.

It is possible to punish in a way that would hold the penal law up to ridicule; but it is also possible to punish in a way that surpasses all reasonable measure. In the case where human life is made the object of a criminal gamble, where hundreds and thousands are reduced to extreme want and driven to distress, a mere privation of civil rights would be an insult to justice. When, on the contrary, the violation of a police regulation, a thoughtless word against au-

thority, are punished by the firing squad or by forced labor for life, the sense of justice revolts. The fixing of the penalties in penal law and their adaptation to the individual case should correspond to the gravity of the crimes.

As a rule the penal law of the various states enumerates the sanctions and defines the norms which determine them, or else it leaves this to the judge to do. But it will be necessary to try to secure, by international agreements, a settlement of these penalties, in such wise that the crimes mentioned in the agreements may not be at an advantage anywhere; that is to say, that their punishment be not less formidable in one country than in another, nor that there be hope of a more lenient judgment before one tribunal than before another. It would be impossible to impose such a settlement on states by force, but an objective exchange of views would, nevertheless, give the hope of attaining agreement bit by bit on essentials. There would be no invincible obstacle, except from a political system built, itself, on the aforementioned injustices which the international agreement is to prosecute. Whoever lives by injustice cannot contribute to the formulation of law, and he who knows himself to be guilty will not propose a law which establishes his guilt and hands him over to justice. This circumstance explains in some degree what happened when recognition was sought for "The Rights of Man," although there are other difficulties, which proceed from entirely different causes.

IV

We will speak, in the fourth place, of the juridical guarantees, of which there is question on several occasions in the program of your Congress.

The function of law, its dignity, and the sentiment of equity natural to man, demand that from first to last the punitive action should be based, not on arbitrary will and passion, but on clear and firm juridical rules. That means, first of all, that there is a judicial trial—at least summary, if there is danger in delay—and that the trial be not by-passed, in reaction against the offense, and justice thus pre-

sented with an accomplished fact. To avenge a bomb thrown by an unknown hand by machine-gunning the passers-by who happen to be in the road is not a legal way of acting.

The very first step in the punitive action, the arrest, must not be done wantonly, but must respect juridical norms. It is not admissible that even the most irreproachable citizen might be able to be arrested arbitrarily and disappear without a word into prison. To send someone into a concentration camp and keep him there, without any regular trial, is a mockery of the law.

The judicial investigation must exclude physical and psychic torture and narcoanalysis; first of all, because they violate a natural right, even if the accused is really guilty, and, secondly, because they too often give erroneous results. It is not unusual for them to end in the precise confessions desired by the court, and in the ruin of the accused, not because the latter is guilty in fact, but because his physical and psychic energy is exhausted, and he is ready to make all the declarations required. "Rather prison and death than such physical and psychic torture!" We find abundant proof of this state of things in the spectacular trials, well known to all of us, with their confessions, self-accusations, and demands for pitiless chastisement.

It is about 1100 years since the great Pope Nicolas I, in the year 866, replied in the following manner to the question of a nation which had just come into contact with Christianity (*Nicolai primi responsa ad consulta Bulgarorum*, cap. LXXXVI, 13 Nov. 866-Mon. Germ. hist., Epp. tom. VI, page 595) :

If a thief or a bandit is caught, and denies what is imputed to him, you say among you that the judge should beat him on the head with blows and pierce his sides with iron spikes, until he speaks the truth. That, neither divine nor human law admits: the confession must not be forced, but spontaneous; it must not be extorted, but voluntary; lastly, if it happens that, after having inflicted these sufferings, you discover absolutely nothing concerning that with which you have charged the accused, are you not ashamed then at least, and do you not recognize how impious your judgment was? Likewise, if the accused, unable to bear such tortures, admits to crimes which he has not committed, who, I ask you, has the responsibility for such

an impiety? Is it not he who forced him to such a deceitful confession? Furthermore, if some one utters with his lips what is not in his mind, it is well known that he is not confessing, he is merely speaking. Put away these things, then, and hate from the bottom of your heart what heretofore you have had the folly to practice; in truth, what fruit did you then draw from that of which you are now ashamed?

Who would not wish that, during the long interval passed since then, justice had never departed from this rule! That it should be necessary today to recall this warning, given 1100 years ago, is a sad sign of the aberrations of judicial practice in the twentieth century.

Among the safeguards of the judicial action is also reckoned the freedom of the accused to defend himself, truly, and not just for form. Both he and his counsel must be permitted to submit to the court all that speaks in his favor. It cannot be allowed that the defense may only put forward what is acceptable to the court and to a biased justice.

An essential factor of the safeguards of the law is the impartial composition of the court of justice. The judge may not be biased, either personally or for the state. A judge who has a true sense of justice will himself renounce the exercise of his jurisdiction in a case in which he would consider himself to be an interested party. The "popular tribunals," which, in the totalitarian states, were composed entirely of members of the party, offered no juridical guarantee.

The impartiality of the college of judges should also be assured, and especially when international relations are involved in the penal process. In such a case it may be necessary to have recourse to an international tribunal, or at least to be able to appeal from a national to an international one. One who is outside the quarrel feels there is something wrong when, at the end of hostilities, he sees the conqueror judge the conquered for crimes of war, when the conqueror himself has been guilty of similar deeds towards the conquered.

The conquered may undoubtedly be guilty; their judges may have a clear sense of justice and the desire to be entirely objective; nevertheless, in such a case, the interest of the law,

the confidence which the sentence is to command, will often require that neutral judges be added to the tribunal, and that the decisive majority depend on them. The neutral judge should not then consider that it is his duty to acquit the accused; he should apply the law as it exists, and regulate his actions according to it.

But the aforementioned addition of neutral judges gives the parties immediately concerned, the disinterested third party, and world opinion a greater certitude that "right" will prevail in the decision. It undoubtedly constitutes a certain limitation of private sovereignty, but this limitation is more than compensated for by the increase in prestige, and by the added regard and confidence for the judicial decisions of the state which acts thus.

Among the safeguards demanded by the law there is none, perhaps, more important or more difficult to secure than deciding culpability. It should be an unassailable principle of penal law that the "penalty" in the juridical sense always presupposes a "fault." The simple relation of cause to effect does not merit to be considered as a juridical principle, sufficient in itself. This assertion does not in any way undermine the law. In the crime committed with an evil intention, the principle of causality is fully verified; the result—the "*effectu secuto*" of Canon Law—may, in fact, be required in order to be sure that a crime was really committed. But in penal law, causality and the resultant effect are only imputable if accompanied by culpability.

Here the judge meets with difficulties, even with great difficulties, to resolve which a conscientious examination of the subjective element is necessary. Did the author of the offense sufficiently know the illegality of his action? Was his decision to do it substantially free? In answering these questions one will be helped by the presumptions allowed for by the law. If it is impossible to establish the guilt with moral certitude, one will abide by the principle that "in doubt the presumption is in favor of the accused."

All this is already to be found in the simple criminal case. But the numerous trials of the war, and after the war up to our own day, have given the question a particular

character. The judge had, and still has to study the case of those who have commanded others to commit a crime, or who have not prevented it when they could and should have done so. More often still there arises the question of the guilt of those who have only acted on the orders of their leaders, or were even forced by them under the threat of the direst punishments and even death. Very often, in these trials, the accused have pleaded the circumstance that they were only acting on "orders from above."

Would it be possible to secure by international agreements that leaders, on the one hand, be rendered juridically incapable of ordering crimes, and punishable before the law if they do so; on the other, that subordinates be dispensed from executing such orders, and punishable in the law if they obey them? Would it be possible to suppress by international agreements the juridical contradiction by which an inferior's property and life are threatened if he does not obey, and by which, if he obeys, he has to fear that at the end of hostilities the injured party, if he gains the victory, will hand him over to justice as a "war criminal"?

The moral principle in such cases is absolutely clear: no higher authority can validly command an immoral act; there exists no right, no obligation, no permission to accomplish an act, evil in itself, even if it is ordered, and even if the refusal to do the action involves the worst personal damages. This moral principle is not under discussion here. We are interested for the moment in putting an end to the juridical contradiction which we have mentioned by establishing, through international agreements, positive juridical rules, well defined and recognized by the contracting states as binding.

The same need for an international settlement exists for the principle of collective guilt, so often used and applied during recent decades, about which the judge had often to decide when determining the culpability of the accused, and which more often has served to justify administrative measures. States and tribunals, which found in collective guilt a justification for their pretensions and maneuvers, invoked the theory and applied it as a rule of action. Their oppo-

nents questioned its validity and even considered it unacceptable in any order of things established by man alone, because tainted with contradiction in itself and from the juridical point of view.

But here again, the ethical and philosophical problem of purely collective guilt is not at stake for the moment. We are concerned rather with finding and fixing a practical juridical formula to be adopted in case of conflict, and especially of international conflict, when collective guilt can be of decisive importance for determining culpability, and has been more than once. The safeguard of a regular juridical trial demands that in this conjuncture the action of governments and of courts should be secured against arbitrariness and purely personal opinion, and be solidly founded in clear juridical rules: a foundation which corresponds to sane reason and to the universal sentiment of justice, and at the service of which the contracting governments may be able to put their authority and their power of coercion.

V

To conclude, We wish to say a word concerning some of the foundations of penal law:

1. The establishment of any positive law presupposes a series of fundamental needs existing in the nature of things.
2. The penal law must be built on man, considered as a personal, free being.
3. Only a person, who is guilty and responsible to a higher authority, may be punished.
4. The penalty and its application are in the last analysis postulates of the juridic order.

1. The law is ultimately founded on the stable and immutable nature of things. Wherever there are men and nations gathered in communities with laws, are they not precisely human beings with a nature which is essentially the same? The needs which derive from that nature are the

guide rules of law. However different the formulation given to these needs in positive law, according to various times and places or varying degrees of development and culture, their central kernel is always the same, because it is the expression of man's nature. Those needs are, as it were, the dead point of a pendulum. Positive law swings beyond the dead point, now on one side, now on the other; but whether it likes it or not, the pendulum always returns to the dead point fixed by nature. It is of little consequence whether these needs of nature are called "law," "ethical norms," or "postulates of nature." The fact is that they exist; that they have not been invented by man's caprice; that they are really rooted in the nature which man himself did not fashion; that they are therefore to be found everywhere; and, consequently, all public law and all law of nations finds in our common human nature a clear, solid, and durable foundation.

It follows from this that any kind of extreme juridical positivism cannot be justified in reason. This positivism is expressed in the principle: "The law is whatever is established as such by the legislative power in the national or international community, and nothing but that, quite independently of any fundamental need of reason or nature." If one urges that principle, there is nothing to prevent a logical or moral contradiction; that unbridled passion, the whim and brutal violence of a tyrant and criminal might become the law of what is right. History, unfortunately, furnishes many examples of this possibility become reality. If, on the contrary, juridical positivism is so understood that, while recognizing fully those fundamental needs of nature, the term "law" is only used for laws formulated by the legislature, then many may consider this use of the word inexact; but, nevertheless, it offers a common basis for the construction of an international law founded on the ontological order.

2. There is an essential difference between the juridical and the physical order of things. In the physical order, nature works automatically; not so in the juridical order, where man's personal decision must intervene, in conforming his conduct to the order established by law. "Man is the arbiter of each of his personal acts" is a phrase that expresses an

ineradicable human conviction. Men will never admit that what is called the autonomy of the will is only a tissue of internal and external forces.

There is much talk today of security measures destined to replace the punishment for the crime or to accompany it, of heredity, of natural dispositions, of education, of the extensive influence of the instincts at work in the depths of the unconscious or subconscious. Although such considerations may lead to useful conclusions, let us not gloss over the plain fact that man is a personal being, endowed with intelligence and free will, who decides finally himself what he will do or not do. This does not mean that he is free from every internal and external influence, from every inclination and attraction; nor does it mean that he has not to struggle to keep the right path, daily to fight a difficult battle against instinctive, and perhaps unhealthy, urges. But it does mean that, despite all the obstacles, the normal man can and must assert his will; and it is the normal man who must serve as the rule for society and law.

Penal law would have no sense if it did not take into consideration this aspect of man, but penal law makes complete sense because this aspect is true. And since this aspect of man, personal and free, is a conviction of humanity, the effort to establish a uniform penal code has a solid basis.

3. A third presupposition of penal justice is the factor of guilt. It is this which ultimately distinguishes justice properly so called from administrative measures of security. By it the penal juridical order is guaranteed against all arbitrariness, and safeguards for the accused are defined and assured.

Penal law is a reaction of the juridical order against the delinquent. It presupposes a causal relationship between the latter and the former. But this causal relationship must be established by a delinquent who is culpable.

The importance of culpability, of its presuppositions and its effects in law, demands, especially on the part of the judge, a profound knowledge of the psychological and juridical process at its origin. Only on this condition will the judge be spared the painful incertitude which weighs on the

doctor, who is obliged to make a decision, but who can make no certain diagnosis according to the symptoms of the sickness, because he does not perceive their internal connection.

At the moment of the crime, the delinquent has before his eyes the prohibition imposed by juridical order. He is conscious of it and of the obligation it imposes. But, nevertheless, he decides against his conscience, and to carry out his decision commits the external crime. That is the outline of a culpable violation of the law. By reason of this psychological process the action is attributed to its author as its cause. He is guilty of it, because his decision was conscious; the order violated; and its guardian, the state, demands an account of him; he falls under the penalties fixed by the law and imposed by the judge. The many influences exercised on the acts of intelligence and will, that is to say on the two factors which are the essential constitutive elements of culpability, do not fundamentally alter this process, however great their importance in determining the gravity of the guilt.

The outline sketched above is always valid, because it is taken from the nature of man, and from the nature of a culpable decision. It provides a common basis for international discussions, and may be of use in the formulation of juridical rules to be incorporated in an international agreement.

The deep knowledge of these difficult questions also prevents the science of penal law from digressing into mere casuistry, and, on the other hand, it directs it in the use of that casuistry necessary in practice, and thus justifiable.

If, however, men refuse to base penal law on culpability as an essential element, it will be difficult to create a true penal law and to reach an agreement in international discussions.

4. It remains to say a word about the ultimate meaning of punishment. Most modern theories of penal law explain punishment and justify it in the last resort as a protective measure, that is, a defense of the community against crimes being attempted, and at the same time, as an effort to lead the culprit back to observance of the law. In these theories,

punishment may indeed include sanctions in the form of a diminution of certain advantages guaranteed by the law, in order to teach the culprit to live honestly; but they fail to consider expiation of the crime committed, which itself is a sanction on the violation of the law, as the most important function of the punishment.

It may be permitted to a theory, to a juridical school, to national or international penal legislation to define philosophically punishment in the way in which they understand it, in conformity with their juridical system, provided that they respect the considerations developed above concerning the nature of man and the essence of guilt.

But from another point of view, and indeed a higher one, one may ask if the modern conception is fully adequate to explain punishment. The protection of the community against crimes and criminals must be ensured, but the final purpose of punishment must be sought on a higher plane.

The essence of the culpable act is the free opposition to a law recognized as binding. It is the rupture and deliberate violation of just order. Once done, it is impossible to recall. Nevertheless, insofar as it is possible to make satisfaction for the order violated, that should be done. For this is a fundamental exigency of "justice" whose role in morality is to maintain the existing equilibrium, if it is just, and to restore the balance, when upset. It demands that by punishment the person responsible be forcibly brought to order. And the fulfillment of this demand proclaims the absolute supremacy of good over evil; right triumphs sovereignly over wrong.

Let us take the last step: In the metaphysical order, the punishment is a consequence of our dependence on the supreme Will, a dependence which is inscribed indelibly on our created nature. If it is ever necessary to repress the revolt of a free being and re-establish the broken order, then it is surely here when the supreme Judge and His justice demand it. The victim of an injustice may freely renounce his claim to reparation, but as far as justice is concerned it is always assured to him.

This more profound understanding of punishment gives no less importance to the function of protection, stressed today, but it goes more to the heart of the matter. For it is concerned, not immediately with protecting the goods ensured by the law, but the very law itself. There is nothing more necessary for the national or international community than respect for the majesty of the law and the salutary thought that the law is also sacred and protected, so that whoever breaks it is punishable and will be punished.

These reflections help to a better appreciation of another age, which some regard as outmoded, which distinguished between medicinal punishment—*poenae medicinales*—and vindictive punishment—*poenae vindicativae*. In vindictive punishment the function of expiation is to the fore; the function of protection is comprised in both types of punishment. Canon Law, as you know, still maintains the distinction, which attitude is founded on the convictions already detailed. Only it gives full meaning to the well known word of the Apostle in the Epistle to the Romans: “*Non enim sine causa gladium portat; . . . vindex in iram ei qui malum agit.*” (Rom. 13, 4). “It is not for nothing that he bears the Sword: he is God’s minister still, to inflict punishment on the wrong-doer.” Here it is expiation which is brought out.

Finally, it is only the expiatory function which gives the key to the last judgment of the Creator Himself, Who “renders to everyone according to his works,” as both Testaments often repeat (cf. especially Matt. 16, 27: Rom. 2, 6). The function of protection disappears completely in the after-life. The Omnipotent and All-Knowing Creator can always prevent the repetition of a crime by the interior moral conversion of the delinquent. But the supreme Judge, in His last judgment, applies uniquely the principle of retribution. This, then, must be of great importance.

Whether or not, as We have said, one leaves to theory and practice the duty of defining the role of punishment in the narrower modern sense, or in the other broader one, it is possible for collaboration in either case, and one can look forward to the creation of an international penal code. But do not refuse to consider this ultimate reason for punish-

ment, merely because it does not seem likely to produce immediate practical results.

Our elucidations, gentlemen, have followed the line of contact between law and its metaphysical foundations. We will be happy, if thereby We have contributed something at least to the labors of your Congress for the protection and defense of man against crime and the ravages of injustice.

We will conclude by wishing all success on your efforts to construct a sane international penal code for the advantage of society, of the Church, and of the community of nations.

May the Goodness and Mercy of God Almighty give you as a pledge of it His blessing.