

idea on the subject. The publishers being devoted as they were, to the propaganda of several works mystic in their majority—the forensic literature suffered from lack of activity, inherent to a period in which the progress of science was confined to only some of our principal scientific centres.

Within those august precincts, doctors in jurisprudence initiated an intellectual development, inspired by the doctrines established beforehand, and by those founded by our compatriots Nicolas Puerto, and Jose Fernandez de Rivera, helped by those of Antonio Lopez de Matosso, Nicolas Segura, Francisco Solchaga, and Manuel Lardizabal y Uribe. The work of all these jurists was unremitting; and, although now and then they allowed repose to their noble task, they nevertheless gave a strong impulse to their researches, like a traveller who stops to rest a while in order to acquire new vigor to proceed on his journey.

Our remembrances being associated with the renown of those illustrious champions of science, we shall always revere their efforts to exalt learning, because their toilsome researches were always held in high esteem. We feel bound to congratulate ourselves on evoking a tradition that History begins to transmit to us, notwithstanding the incompatibility of character of old works as regards that which modern philosophy has impressed on science, because if our ancestors instituted the spread of ideas, it behooves our present generation to purify them at the heat of the new established ones.

It was perhaps in this way that our illustrious fellow-citizen, Licenciate Juan M. Wenceslao Sanchez de la Barquera understood it, when he caused to be printed, in 1822, his monograph entitled «Lessons on Polities and Public Law, for the instruction of the People,» which was published eleven years previous to the eminent jurist Mr. Ma-

carel's issuing of his «Elements of Public and Politic Law.» The merits of the Mexican work appear conspicuously when we read the Prologue of that of the French writer (published in Paris, in 1833), where Mr. Macarel says that, up to that date, no savant, in Europe, had compiled the elements of this science, doubtless owing to its having been considered as a kind of arcanum, exclusively for the use of statesmen, and not as a science that ought to be made accessible to the public in general. This declaration ought to be sufficient to make us proud of having registered, in the scientific order, one of the ephemeris which have contributed in a large scale to the high degree of consideration attained by our country.

About that time, the Law bearing the date of June 10th. 1813, was in force and vigor. That law was the first enactment on literary copy-right, in Mexico. According to its provisions, several franchises were granted to authors, in compliance with the new regime created by the Constitution that had been promulgated in the previous year, 1812.

That very same Law, amplifying the effects of the one promulgated on the 7th. day of September, 1558, restrained the privilege born under the protecting shade of that Law, and which had been unduly allotted to the publishers during the Middle Ages. By that legal means was likewise extinguished the prohibition of establishing printing offices to those lacking a special authorization from the King. It was with general applause that the evolution of thought succeeded in overcoming the blind despotism of privileged printers.

Notwithstanding the excellence of these reforms, we are led to believe that the efforts displayed by authors were of limited importance. We have the proof of this in

the scanty literary movement, among us down to the middle part of this century. With the purpose of impelling that movement, a *Junta*, was organized, entrusted with the task of drafting a Law on literary copy-right. Said *Junta* was incorporated according to the provisions of an Act dated the 24th. November 1841; and it answered, with effect, the purposes of the Government.

The National Government felt justly proud of the promulgation of its Law, dated December 5th. 1846, which organized, upon new bases, the literary copy-right in this Republic, for, under its shade, the rights which the same law acknowledged to authors become guaranteed and fully protected. In spite of its beneficent influence, we must state, here, with regret, that only one concession for the literary copy-right of a work on forensic matter was registered during the lapse of eighteen years. This assertion is founded on the data furnished by the Register of Literary copy-right, in the Archives of the Department of the Interior, to which Department this branch of the Administration belonged until the beginning of the year 1861, when, in compliance with the Law dated February 28th. 1861, that branch was transferred to the Department of Justice.

Although, at first sight, this lack of literary movement might reveal the exaggerated pessimism of some persons who adduce the sterility of their efforts, the truth is that such an apparent lethargy does not obey to a rare or singular discouragement that might be prevalent among the members of our Bar, but rather to a special design on the part of the authors, who neglected, in every case, to make the proper registration; and also to the pernicious results of the political strifes of which Mexico was the theatre until 1867.

At present, that—most happily—those fatal contrarieties have ceased, we observe with satisfaction—and the event is hailed by all—that works on Jurisprudence are now in a larger proportion than they ever were previous to our Independence. This progress is to be attributed—among other causes—to a certain harmonious association of principles and of ideas, tending to daily enrich our forensic literature with the publication of sundry treatises on Civil and Public Law, which have met with a deserved success.

This is evidenced by the Registration of literary copy-rights, and by the labors of our scientific associations which, day after day, acquire an unlimited and well deserved prestige.

These Associations, as Licenciate Manuel Olaguibel rightly asserts, devote themselves—following the example of the Bibliographical Societies of Europe—to save from oblivion the historical, literary, and scientific works, of which very few copies remain extant, or which had never been printed, having been kept in manuscript. They, the individual researches of each book-lover are not lost; they are valuable, as they offer to thousands of readers the hidden treasures which might have been lost for ever. («Impresiones célebres y libros raros.» By Lic. Manuel Olaguibel. Page 122.)

In fact, the literary copy-right being guaranteed to authors by the Civil Code of 1870 (amended in 1884); the professional studies for the practice of Law being regulated in a radical manner for the courses of the same in the School of Jurisprudence; an Academy of Mexican Jurisprudence having been established; («The Mexican Academy of Jurisprudence is correspondent of the Madrid Academy of Jurisprudence»,) and the Society of the Old College of

Lawyers of Mexico having been reorganized; the scientific propaganda at last realized through the Book and the Journal as the special organ of the body juridic, it is indubitable that forensic literature and Law—under the shade of such healthy elements—have acquired the development above referred to.

In the presence of such remarkable progress, we are fully justified in affirming that Jurisprudence, in our days, is no longer the science of a few, nor is it the privilege of professors; it is, now, par excellence, the practical and positive science, because at present it is absolutely true that *in jure vivimus et movemus et sumus*. Legislation is our atmosphere, it is the ambient air we breathe. («Introduction to «La Justicia,» page 4, By Lic. Emilio Pardo Jr. (Boletin de la Sociedad de Abogados.)»)

With the purpose of strengthening the development of forensic literature, and of maintaining pure and unalterable the element of confraternity between the Spanish-American Nations and their primitive metropolis, the Civil Law Association of this City of Mexico has contributed its contingent to the Spanish Congress of Jurisprudence, the opening of which took place at Madrid on the 12th. October 1892, to commemorate the fourth centenary of the Discovery of America by Columbus. That Assembly may well be considered as one of the most important ever convened in commemoration of that great event. Our Academy of Jurisprudence appointed, as its representatives, to said Congress, Messrs. Prisciliano Maria Diaz Gonzalez and Francisco L. de la Barra, and the National College of Lawyers Mr. Rafael Rebollar—all of them prominent members of the Mexican Bar.

Judging by the honorability of our representatives to that Assembly, and by the topics of discussion selected,

it is to be believed that the resolutions that may be decided upon shall have an important signification. The purpose of that Assembly is no less than to establish a certain literary league among the peoples of Iberic race, the elements of fraternity and of sympathy existing in them cooperating to that end, which has for its special feature to establish the unification of laws on literary and industrial copy-rights by means of international treaties among the nations which may agree to abide by that pact. It is to be hoped that the initiative of that illustrious Body will be crowned with complete success.

Another of the scientific associations which has also attained exceptional importance is the XIVth. International Literary Congress, inaugurated at Milan, on the 14th. September, 1892, to last until the 24th. of the same month, and the Programme of which embraced, among other points, the following:—

I. Study of existing relations between literary copy-right and the development of national literature, by Max Nordau.

II. A Bill on Contracts with Editors for publication of works, by Eugene Poulet.

III. International Statistics of literary works, and rules for establishing the compilation of said statistics, by Rothlisberger.

This Congress was composed of the members of the International Literary and Artistic Society; of the members belonging to the Society of Italian Authors, of the persons who have been introduced by two members of the Assembly of the Delegates from foreign societies; and of those persons known to have a high standing in literary matters.

On this occasion, it is highly satisfactory for us, reflect-

ing no small credit as it does on Mexico, and ourselves the Members of the Mexican Bar, to pay homage to the memory of our writers on Jurisprudence. They have bequeathed to our generation their advice, through valuable texts. We entertain the belief that their names will be remembered for ever, becoming more and more respected in proportion with the acquisition of the most practical for the advancement of legal science.

MANUEL CRUZADO.

## PRÓLOGO.

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os grandes sucesos que determinaron el auge de España durante el reinado del Emperador Carlos V, comovieron sobremanera el espíritu de los pueblos europeos, impulsándolos al ensanche indefinido de sus dominios.

Un designio de tan vasta labor y fecundo en resultados, debía adaptarse á esfuerzos de ilimitada índole, toda vez que la realización de la idea vinculábase con cierta universalidad de miras, ajustadas al carácter de tan magnánimo intento.

La energía del conquistador, el brillo de la idea y el justo ahínco de ver coronados sus deseos, fueron los elementos principales para la realización de sus ingénitas aspiraciones.

A la insinuante perseverancia del pueblo íbero, y al éxito alcanzado en sus empresas, débese que la España conquistara en épocas anteriores el envidiable prestigio y renombre que las demás potencias le otorgaran.

Al Papa Alejandro VI cupo en suerte colaborar á tan colossal empresa, estableciendo, sin embargo, ciertas limitaciones al inmoderado ensanche del Conquistador, por medio de las Bulas y otras disposiciones secundarias, como un fiel reflejo del supremo influjo que alcanzara la propaganda de la idea religiosa en el siglo XVI.

Así fué como los pueblos de América quedaron sometidos á la Corona de España, bajo una organización política más ó menos adecuada á sus caracteres y tendencias, y el lapso de tres centurias apenas fué bastante para asimilar los intereses y carácter de los pueblos subyugados al de la Metrópoli ibérica, que ostentaba al mundo los detalles de su inmenso poderío.

Esto, no obstante, la suerte de América tenía que substraerse á las injustas taxativas del conquistador europeo, porque inspirada en los más vivos sentimientos de libertad é independencia, no escaseaba esfuerzo alguno para lograr tan acariciados fines, y al efecto puso en juego nuevos elementos de actividad encaminados al apoyo de su soberanía y al de la sanción de tan saludables principios. Una vez realizado este propósito, la Nación Mexicana surcó diversos campos de labor intelectual, bajo la egida del nuevo precepto político, acordado para el establecimiento de una organización fundamental adecuada á las aspiraciones de sus hijos. De allí surgió la salvadora fórmula que vino á garantizar los derechos sacrosantos del hombre. La libertad del pensamiento y la de enseñanza, penetraron en el santuario del hogar y á su turno en el espacioso recinto de las aulas escolares. Por último, el publicista y profesor, estimulando á su vez con palabras de aliento á la juventud, iniciábanla á cada paso en la adopción de un nuevo orden de ideas, como la savia que alimenta las fibras del arbusto.

Bien pronto los esfuerzos colectivos de los jurisconsultos

nacionales en justa colaboración con los designios del poder, contribuyeron á que la literatura jurídica mexicana diera ostensibles muestras de progreso y desarrollo. A esto débese quizá la autoridad jurídica que los Tribunales del país les otorgaran en sus decisiones. Desde entonces los profesores de jurisprudencia, á la vista de tan insinuante impulso, no vacilaron en dar á luz una obra de texto apropiada á la materia, como un medio substituyente á labores de extraña procedencia que con anterioridad habían normalizado los estudios del Derecho Patrio.

La importancia de tan señalada conquista acusaba, sin duda, una época estacionaria anterior para la ciencia jurídica, no obstante el respetable núcleo de profesores nacionales llamados á interpretarla. Variadas causas determinaron esta inacción, y entre ellas señalamos las que nos proporciona el recuerdo histórico de las labores tipográficas en Mexico, y el ahínco de los editores hacia la propaganda de las obras místicas.

Tales signos de inactividad no podían quedar desapercebidos en presencia de los últimos adelantos tipográficos é industriales, y menos aún ante los principios instituídos recientemente en contraposición á aquéllos, en que á expensas de toda discusión razonada, entronizábase el culto hacia el dogma promulgado por la voz del maestro, que no siempre hubo de reconocer justa limitación.

Cuál haya sido la causa de las ya enumeradas conquistas, y qué signos precursores determinaron tan importantes adelantos, nos lo indica el reconocimiento de los derechos del hombre y su sanción por medio de la Carta Fundamental de la República, pues bajo su amparo y protección quedaron relevadas de toda censura las libertades de industria y enseñanza unidas á la libre emisión del pensamiento. Entonces la voz del maestro recuperó su natural y justo

prestigio como el germen de útiles y provechosas enseñanzas.

Al abrigo de estas ideas florecieron en México, durante la segunda mitad del siglo XIX, esforzados campeones del saber é intérpretes leales del precepto legal. Honrosa mención ameritan los nombres de los Díaz Covarrubias, Prieto, García Peña, Lozano, Castillo Velasco, Joaquín Eguía Lis y Protasio Pérez de Tagle, dignos émulos para la juventud estudiosa, y fundadores de la Escuela Especial de Jurisprudencia de la Capital. Los Sres. Ignacio L. Vallarta, Lerdo, Iglesias, Gómez del Palacio y Ramírez, que abordaron profundos y trascendentales estudios sobre el Derecho Constitucional. Los anales científicos les reservan igualmente un sitio de honor á los Sres. Mariano Yáñez, Antonio Martínez de Castro, Manuel María Ortiz de Montellano, Justo Sierra, Luis Méndez, José María Lafragua, Isidro Montiel y Duarte, Rafael Dondé y Fernando Corona, aventajados juristas por más de un título, y entre ellos, haber contribuído á la institución de las bases fundamentales de la legislación patria en el orden civil y penal. Existieron, en fin, otros varios jurisconsultos cuyos nombres y méritos consigno en apropiado lugar, procediendo cautelosamente á ese respecto, antes que tributarles apasionada lisonja ó inmerecido encomio. Si alguna referencia se ha escapado á mi leal proceder, imploro cumplida excusa, dada la índole de mis tareas, que nuevas rectificaciones bibliográficas esclarecerán la duda, salvando del olvido los nombres de escritores ignorados á quienes la ciencia y la verdad les consagraron en todo tiempo oportuno sitio, entre los que hoy integran la presente reseña bibliográfica.

Inclinemos por ahora nuestra frente ante el recuerdo de tan distinguidos obreros de la ciencia; ante aquellas energías intelectuales que han legado merecida honra á la Re-

pública; ante ese distinguido grupo de compatriotas que en elocuentes manifestaciones de la más sublime abnegación, evidenciaron el heroísmo de su espíritu hasta abordar á la agitada lucha por el triunfo de la idea.

El éxito é importancia de tan magnánimos esfuerzos imprimió un carácter especial á la centuria en que florecieron, y tal vez esto justifique el título de la vocación que el pueblo de México le consagra, al entonar en las aulas escolares himnos dedicados á su glorificación, á la par que galanas frases evocando su memoria.

La energía de tales conceptos fué tal, que al instante repercutieron con eco majestuoso en el seno de la Representación Nacional y en la del Concurso organizado por las asociaciones científicas de la Capital, en los momentos en que expiraba el siglo XIX.

Era preciso evocar un recuerdo á la memoria de tan insignes jurisconsultos y apreciar, siquier á grandes rasgos, la importancia de sus labores jurídicas, con el fin de enervar erróneas creencias referentes al adelanto científico de la Nación, señalando el grado de su nivel intelectual. Fué necesario, además, indicar qué tratados pudieran consultarse en asuntos especiales del orden jurídico y saber qué obras se publicaran por determinado autor, contribuyendo así á la realización del ideal que viene persiguiendo el Instituto Bibliográfico Internacional, fundado en la ciudad de Bruselas en el año de 1895. Organizar asimismo, de una manera definitiva, el canje internacional de las obras científicas, según lo acordado en la Sociedad Real de Londres instituída en 1898, la cual cooperó nada menos que á la fundación de la Junta Nacional de Bibliografía Científica en la Ciudad de México en 1899, y á su vez la del Instituto Bibliográfico Mexicano en 29 de Mayo del propio año. Por mi parte he debido corresponder á las labores de esta Sociedad, tanto

porque mi gratitud así lo exige, cuanto porque un deber así lo impone.

El contingente de mis desvelos es bien reducido y deficiente; así lo comprendo, no obstante que viene á corregir labores similares que emprendí desde el año de 1894, al publicar á mis únicas expensas «La Memoria para la Bibliografía Jurídica Mexicana.» El que hoy someto á vuestra deliberación, marca á grandes rasgos la sucesión histórica de la evolución jurídica patria, desde su período embrionario hasta el de la gestación científica que señala el presente siglo. Magna empresa es esta, superior á mis débiles esfuerzos, y que sólo el recto criterio y erudición de mis consocios podrá llevar á cabo.

Antes de concluir, me es grato felicitar á los honorables miembros del Instituto Bibliográfico Mexicano, quienes, á impulsos de un designio superior, agrúpanse en sagrado recinto, con el fin de utilizar el legado de nuestros próceres, para transmitirlo á su vez á las generaciones venideras. Así, habráse operado una actividad noble y honrosa, inherente al carácter y espíritu de la misma Sociedad. Así también habrémos pagado un tributo moral á la ciencia, y sus intérpretes quedarán altamente satisfechos de haber dado cima á trascendentales y nobilísimas tareas.

Méjico, Octubre 31 de 1904.

M. CRUZADO.

## PROLOGUE.



THE great events which determined the acme or power and glory attained by Spain during the reign of Emperor Charles V, exerted a great influence on the Nations of Europe, pushing them to an unlimited expansion of their domains.

A purpose of such immense labor, and of such fruitful results, ought to adapt itself to varied efforts, since the realization of the idea it pursued was connected with a certain universality of views, adjusted to the character of an endeavour of such magnitude.

The energy of the conqueror, the brightness of the idea, and the natural desire to see every exertion crowned by success, were the chief elements for the attainment of such eager, earnest aspirations.

It is to the unrelenting perseverance of the Iberian people, and to the success attained in their undertakings, that Spain was indebted for acquiring—in former times—the