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# Notes on Current and Recent Events

## NOTES ON CURRENT AND RECENT EVENTS.

### ANTHROPOLOGY—PSYCHOLOGY—MEDICINE.

**"Experimental Psychological Study of the Criminal."**—In an extract from the bulletin of the Anthropological Society of Brussels, Tome 30, 1911, is a contribution by M. Paul Menzerath, which was originally made to the Anthropological Society of Brussels at its meeting on July 31, 1911. In this contribution Dr. Menzerath summarizes the psychological studies of criminals which he has made in his laboratory. Since memory is in the last resort an affective function, that is, a function of interest, the investigator originally had considerable confidence that substantial results might be obtained from examinations of criminals by the method of word associations. After extensive investigations, however, he has reached the conclusion that at any rate until our methods can be much more refined than they are at present, little of scientific value can be expected from this method. The readers of this JOURNAL will understand that the method in question consists in pronouncing a series of words to an individual under examination and requiring him as quickly as possible after the pronunciation of a given word to respond by uttering one which he associates with the original. The hypothesis is that when the key-word is one which touches upon a secret which the examinee is eager to keep hidden there will be a certain hesitation on his part, and consequently a prolongation of the time passing between the utterance of the key-word by the investigator and the response by the subject. The hypothesis is, furthermore, that the character of the words by which the subject responds may be a source of information with regard to the suspect's association with the criminal act. Laboratory tests in various places in this country and abroad have hitherto led many to believe that ultimately we might attain through this method to a high degree of skill in the detection of the criminal. Menzerath, however, as noticed above, has lost his confidence in this means and in his tests he has substituted therefor a reading test. A series of words is selected as before, some of which relate closely to the situation, the examinee's connection with which is in question, and others are wholly unrelated to the situation. These words are printed, each one upon a card, all in type of uniform size and the cards themselves are of uniform size. They are presented before the eyes of the examinee at a fixed distance which can be determined by preliminary test. The hypothesis is that a word which is relevant to the interesting situation can be recognized more distinctly and consequently at a greater distance than the irrelevant word. This method, of course, is valuable only in the case of individuals who can read. For those who cannot read Dr. Menzerath substitutes an auditory presentation of the word stimulus, the hypothesis being that those words which are closely related to the interesting situation can be heard distinctly at a greater distance than can those which are less closely related to the situation in question.

The same investigator has reported upon physiological reaction tests such as may be determined for instance by the D'Arsonval Galvanometer. In this case the hypothesis is that when a word closely related to the interested situation is pronounced to the subject or read by him, there will be recorded in the instrument an unusual deflection of the needle, due to unusual physiological or chemico-physiological processes.

The author of the communication referred to in this note makes no extravagant claims whatever. The whole question was freely discussed at the meeting and the opinion was freely voiced on all hands that the whole matter is yet distinctly in the experimental stage. R. H. G.

**Professor von Jauregg on the Treatment of the Dangerous Insane.**—Professor v. Jauregg opposes the notion that a verdict of "unaccountability" (Zurechnungsunfähigkeit) for an insane or criminal-insane person should be entrusted to lay (i. e., not judicial) hands. The *acquittal* of an insane person goes upon the tacit assumption that in the alienist and the asylum instead of in punishment lies society's protection. But Austrian laws and institutions contradict utterly this assumption. There is not a single provision in Austrian law or procedure to guide magistrates in cases of unaccountability through mental derangement. It is quite possible that law-makers took it for granted that asylum care would follow automatically in such cases and that no statutory rules were necessary. Yet actually so many cases have come up to take advantage of this anomalous situation that law is travestied and psychiatry has earned a not wholly unmerited discredit.

Various causes have conspired to produce the situation. For example, more acquittals occur than are reconcilable with the expectation that they are to be cared for by asylums. Variations in the number of such acquittals indicate the influence of particular persons or schools in the matter of psychiatry. Judges while offering some counterweight to the psychiatrists have "acquired a taste for liberality in the adjudgment of unaccountability." Differences of opinion between asylum physicians and court psychiatrists arise often from the fact that the condition of the accused varies from time to time; for example, he may be able consciously to manifest more marked signs of mental unsoundness during his trial. Once in the asylum, however, he tries to appear normal; pity then works to set him free. Witnesses also give testimony colored by subjective prejudices. In other cases direct simulation enters. The remedy would be to remand the simulator for retrial. Yet the same performance might be repeated almost *ad libitum*. Such simulators introduce a disturbing element into the asylums, which destroys the *morale* of the whole institution. The tendency, of course, of such institutions, especially where they are likely to be overcrowded, is to get rid of the disturbers. Furthermore, the asylums may refuse to accept a criminal acquitted on the ground of insanity by judge or jury in defiance of psychiatric testimony. But even if the asylum is ready to accept such cases its purpose is often set at naught by escapes, an occurrence much more frequent in asylums than prisons. A long list of cases might be cited illustrating these points to show how social protection often falls between the two stools of criminal procedure and psychiatry. There is hence a crying demand that criminal law occupy itself with care of the criminal-insane after

trial and commitment. But how? There are three possible ways: 1. By annexes to ordinary insane asylums. 2. Annexes to prisons. 3. Special institutions for the criminal-insane. The first two means having been demonstrated incapable of supplying a solution, a project of law creating institutions of the third type is now under discussion in Austria. But the law is designed to be rather permissory than mandatory, to avoid unjust harshness in certain less dangerous cases; confinement to continue so long as danger to the community lasts; dismissal to be final or subject to recall. This to an American seems sound doctrine and practice, for in no other class of criminal cases does use of the indeterminate commitment appear more imperative. The inmates of such an institution would include dipsomaniacs, epileptic criminals, alcoholic cases complicated with jealousy or other *ideés fixes;* also cases of periodic insanity accompanied with criminality. Thus the population would include many cases not insane in the ordinary sense of the term.

The author praises the basic ideas of this plan, but criticizes certain textual details, especially the variable senses of the words *insane* (Geisteskranker) and *dipsomaniacs* (Trunksuchtiger). He insists that the text be cleared of all ambiguity regarding the period of detention, and that it be clearly understood that detention should extend not only during the period of mental disorder, but during the period of danger to the public (Gemeingefährlichkeit). He further recommends that all unnecessary odium attaching to the name of the proposed institution be avoided and suggests the name Staatsirrenanstalt instead of Staatliche Anstalt für verbrecherische Irre.

The exact text of section 36 of the proposed law as amended by Herr von Jauregg would read: "Whoever commits an offense punishable by more than six months' imprisonment and on account of unaccountability at the time of the act is not prosecuted or sentenced, shall be remanded to a Staatsirrenanstalt if on account of his mental condition or with regard to his habits or the nature of his act he be deemed specially dangerous to the safety of persons or property."

The author tried in vain to have incorporated in the law a provision whereby the local authorities should bear a part of the cost of maintenance of these new institutions. But local unwillingness to assume this burden (a pride in that vicious sort of economy that shifts a community's responsibilities on someone else—a device not unknown to our own American politicians anxious to make "economy records") has forced the central authorities to provide for it. One result of this *Ressortpatriotismus* will be that magistrates will be inclined to send insane-criminals to the ordinary local asylums as heretofore to avoid burdening the new institutions whose maintenance must be provided by the department of justice. A more favorable result is to be anticipated from the provision that will permit alien criminals declared insane to be transported to an asylum of their native land.

In contradistinction to the Austrian plan, which while still far from complete marks a hopeful beginning, neither the German nor Swiss law provides special institutions for criminal-insane. The courts *may,* according to the measure of social danger, order commitment to an asylum, but dismissal rests in Switzerland with the court, in Germany with the police authorities. We agree with Herr v. Jauregg that such a system is reprehensible; it is absurd to set up a policeman

or judge as an expert alienist. Yet there are certain judicial and administrative aspects to such cases that in our judgment render it necessary for the committing authority, or some special body (like, say, our boards of pardon), to pass upon dismissals. Where, for example, an institution is becoming pressed for room, the management is likely to subordinate the interests of any given individual and of outside society to the very insistent claims of its society-within-walls. Austria, twenty-five years ago, tried the plan of permitting dismissal only with consent of the committing court, but the scheme ran afoul of the higher sanitary authorities (Sanitätsrat) and was allowed to drop. The particular form of this plan may not have worked advantageously, but as we see it the principle is sound and should be maintained in some form or other.

One final weakness in, especially the Swiss and German methods of dealing with the irresponsibles, lies in the anomalous position of the habitual drunkard. Magistrates are permitted to commit to an inebriate asylum any habitual drunkard acquitted on the ground of unaccountability. But the law is ineffectual as there are no public inebriate asylums, and the private institutions are based on the principle of voluntary entrance, and dismiss patients who disturb the order and welfare of the institution.

Professor von Jauregg's article is a welcome addition to the discussion of this vexed question of the criminal-insane. A solution will come quickly when we have once for all pitched overboard our old notions of assessing exact personal responsibility and accepted the principle of social responsibility with all the sanctions that principle implies. A. J. Todd, University of Illinois.

**Laboratories of Criminal Anthropology in Europe.**—In the *Revue de Droit Pénal et de Criminologie* for January, 1912, is described the work of the laboratory of criminal anthropology established by the Belgian government in 1910. This laboratory is located at the Prison de Forest and is under the direction of Dr. Vervaeck. Here careful study is made of the inmates of the prison. The detailed nature of the examination made in each case is indicated by the schedule used. This provides for general and administrative facts, data with respect to heredity, medical examination, somatic examination which includes anthropometry, the examination of the nervous system which includes psychological tests, psychiatric examination, and sociological and criminological data. As these data are secured they are to be compiled and interpreted so as to determine the causes of crime in Belgium.

The same review for February, 1912, reports that in France the minister of justice, M. Cruppi, has appointed a commission to make plans for the establishment of a laboratory of criminal anthropology. This commission includes among others Senator Léon Bourgeois, the dean of the faculty of medicine at Paris and two other members of the same faculty, representatives of the faculty of sciences at Paris and of the school of anthropology, the directors of the prison administration and of the bureau of judicial statistics, etc.

Maurice Parmelee, University of Missouri.

**The Legalization of Sterilization.**—So much interest is felt in this subject and the various problems relating to asexualization and vasectomy that our readers will be greatly interested to see the views expressed by H. Havelock

Ellis, in his recent contribution to the *London Lancet.* We report the letter entire:

A QUESTION IN EUGENICS.

*To the Editor of The Lancet:*

. . . . "The original question was specific and definite. Is a father, acting in the interests of an epileptic son under age, entitled to procure an operation which will prevent that son from becoming a father? It is a question that will, before long, demand an answer. But it has not so far received an answer. . . . . The question is one that can only be discussed profitably in the dry light of intelligence. Moreover, it demands precise knowledge.

"It is surprising to find that several of your correspondents imagine that a question of this kind can be dismissed by talking about a supposed abstract conflict between the individual and the race. A concrete question demands a concrete answer. In this case the possible father is an individual; the possible children would also be individuals. The children of this father are likely to involve a special burden of anxiety and expense, while his own condition will render him unfit to cope with that burden. Under such conditions the children are likely to be a misery to themselves and others. There is no conflict here between the individual (the possible father) and the race (the possible children). Their interests are identical. Evidently it is dangerous to plunge into academic disquisitions of a pseudo-metaphysical character when asked to reply to a simple concrete question.

"There is another point on which some of us feel that we have been led astray. No doubt there is a wide range of variation in what the phrenologists call philoprogenitiveness. But in some of your correspondents this bump must be developed to a really alarming extent. It is good to have children, so long as one is reasonably assured that these children will be well-born, and that one is able to provide for them. But it is another matter to have children at all costs. We must not allow our philoprogenitive impulses to grow so hysterical that we become unable to see that many people remain happy and lead useful lives without children, and even with no prospect of children. . . . . In many cases, it is probable, sterilization and freedom will prove the only proper alternative to isolation without sterilization. Life under such conditions is not worth living, exclaims one of your correspondents; he would rather retire to a colony of degenerates. Very well. *Chacun à son gout.*

"It is not easy to feel enthusiastic about sterilization, any more than about any other operation for the relief of suffering humanity; it would be better to avoid the need for it, and its scope must always be limited. It is surprising, therefore, to find that one of your correspondents has so much faith in the enormous efforts of asexualization that he fears lest, by abolishing human suffering, it will remove the need for moral helpfulness. One may note in passing that the moralist who would perpetuate human misery in order to cultivate his own moral helpfulness is a moralist who must be severely isolated in inverted commas. (Let me add that I am sure he does himself an injustice and is the victim of his own controversial ingenuity.) But this fear is uncalled for. Everyone who is acquainted with the actual condition of things today knows that, far from being threatened by the disappearance of the need for moral helplessness, we are being overwhelmed by the burdens involved by

our moral helpfulness. The favor with which sterilization is now viewed is largely due to the hope that, if wisely and discriminately carried out, it may help us to cope with those burdens.

"It is not, I believe, quite correct that sterilization has been legalized in Switzerland. The reference is probably to the operations performed at the Cantonal Asylum of Wil. (The portion of the sixteenth annual report of the asylum dealing with the matter is reproduced in the *Psychiatrisch-Neurologische Wochenschrift*, No. 2, 1909.) In these cases the operation (actual castration), carried out on two men and two women, was performed not only by agreement with the relatives and the local authorities, but with the eager consent of the patients themselves, who were thus enabled to return to freedom and to work. No compulsion being exercised, no legislation was necessary. This is as it should be. There are very serious objections to compulsory sterilization.

"This discussion has made it clear not only that it is desirable (let me repeat) to cultivate the dry intelligence, but also that an extended knowledge of the elementary facts of sexual physiology and psychology would be highly advantageous. Here we see a medical man who apparently confuses vasectomy with castration; there another who believes that vasectomy is fairly comparable with crypt-orchidism; again, a third who, one suspects, imagines that sterilization involves impotence. It is also evident that some among us, however young in years, are still living in the past, not realizing what men and women are thinking and doing to-day, nor the ideals which are inspiring them.

"In these matters of eugenics the growth of both general and professional opinion (even since the Royal Commission on the Feeble-minded issued its report three years ago) is most remarkable to those who watch the development of opinion. It is idle to ignore it."

Signed by H. HAVELOCK ELLIS, West Drayton, Sept. 4, 1911.

From the *Medico-Legal Journal*, September, 1911. R. H. G.

**Alcoholism.**—The relationship of alcoholism to bad mental make up is discussed by Hugo Hoppe, of Konigsberg (Gross' *Archiv*, Vol. 46, 1912). It will be recalled that the whole question has been very much upset by the researches of Pearson and Elderton, and Fehlinger gave much support to these investigators. Sturgis, Horsley and Holtscher have attacked the work of Pearson and Elderton, and the present writer allies himself with the more orthodox views that excessive alcoholism is not only a cause for psychical and mental deterioration, but is often a sign itself of such deterioration.

Research in animals has shown that alcohol passes very quickly to the sex glands, and that it impairs and may arrest the motion of spermatozoa. It exerts the same toxic influence on germ cells that it does on all animal cells, and beings developed from such cells may easily show inferiorities and faulty development. Observations by authorities on the subject show the degeneracy of children conceived in drunkenness. Of 97 children so conceived, Lippich found 83 suffering from disease or deformity; e. g. tuberculosis, feebleminded-ness, epilepsy, idiocy, etc. Bezzola, computing the dates of conception of 1896 feebleminded children from the dates of birth, found that the greater number of such conceptions occurred at three periods of the year, corresponding with the times of greatest excess in drinking, while the number of conceptions even-

tuating in normal children was proportionately less at these periods. Many teachers in wine growing districts have observed that seven years after an especially good wine year, they receive a remarkably poor set of scholars.

In 37 out of 39 chronic alcoholics (Weichselbaum), more or less atrophy of the parenchymatous testicular tissues was found, with sclerosis of the interstitial connective tissue; this degenerative change found thus advances and is premature only in alcoholics. Similarly (Lancereaux) the ovary is pathologically diminished, especially the cortical portion. Degeneration of the sexual organs may progress so far as to complete absence of spermatozoa, but before this stage is reached, there are all grades of pathological change where though the germ cells are diseased, fertilization and development are still possible, with a sub-normal offspring resulting. Experiments by Combemale, Hodge, and Faure on dogs, and of Laitinen on rabbits and guinea pigs concur in showing that the effect of alcohol in varying quantities, and for varying periods, is as follows: (1) Greatly increased percentage of still births; (2) greatly increased mortality among the offspring shortly after birth; (3) deformities, infantilism, and disease were markedly in the litters of such animals; (4) the average weight of the offspring of the alcoholized animals was distinctly less than that of normal animals; (5) the average gain in weight of such animals was also less; (6) if the offspring of alcoholized animals was mated with a normal animal, the resultant issue also showed degeneracy; (7) resistance to bacterian invasion was greatly lessened in the progeny of alcoholized animals; (8) the litters of these animals succumbed more rapidly to tuberculosis. Clouston demonstrated pathological changes in the brains of guinea pigs whose parents had been alcoholized. Statistics of the children of alcoholic, compared with those of tuberculous parents, show in the former a greater number of still births and abortions, a greater mortality in the first year, and in the second to the fifth years of life (Arrivé) Prof. V. Bunge observed the percentage of tuberculosis, nervous and mental disorders in children to be in proportion to the greater or less intemperance of their parents. Finally the extensive investigations of Laitinen in Finland, yielded the following conclusions: (1) A larger percentage of abortions and miscarriages among alcoholics; (2) more deaths among the children of drinkers than among the abstinent; (3) more weakly children in the families of alcoholics; (4) in the offspring of alcoholics, more colic in infancy; (5) the average weight of children of the same age and sex greater in the families of the abstinent than in those of alcoholics; (6) the first tooth in children of abstinent parents appeared on an average earlier than in those of drinkers.

In conclusion, the mass of evidence seems to point decisively to the belief that alcohol, as an acute intoxicant at the time of conception, and acting as a chronic poison, has a degenerative influence on offspring, and this even when taken in quantities commonly adjudged moderate.

SMITH ELY JELLIFFE, M. D., New York City.

**Psychiatry in the German and Austrian Criminal Codes.**—The November issue of Archiv fuer Soziale Hygiene, contains an exceedingly interesting article on psychiatry in the German and Austrian criminal draft codes, showing the advances made in the last 20 years in both countries.

## PRESUMPTION OF SANITY AND BURDEN OF PROOF IN HOMICIDE CASES

The German code stipulates that a man cannot be condemned if it can be proved that at the time of the perpetration of the criminal act he was unconscious, idiotic or insane and not master of his mind. In Austria, a criminal action is not punished as such, when the accused was totally deprived of the exercise of his senses, if he was full of liquor or other drugs or under 14 years of age so that he failed to grasp the criminality of his act. Extenuating circumstances are conceded to those whose liberum arbitrium was more or less reduced in both countries, but Germany does not reckon drunkenness amongst such causes. Criminals of this kind must be confined in special institutions and cared for as their special case demands.

The German draft code does not allow the imprisonment of minors under 14 years of age. Capital punishment and life-long confinement are excluded for minors below 18; also confinement in a workhouse and depriving of civic honours. If the act is a result of neglected education, the court might send the minor, besides his prison sentence, to a reformatory or another institution. Special prisons shall be built for minors, the feeble-minded must be kept apart. Austria does not punish criminal action of a minor under 14 as a crime. Minors under 18 cannot be condemned for it either, if their mental and physical development are such that they could not recognize the wrong of their acts.

Minors must be sent to reformatories if the parental supervision is insufficient.

Habitual drunkards can be placed under guardianship in Germany. If on account of being dead drunk at the time of committing a criminal act, the man escapes punishment, he may be sent to a sanitarium for alcoholics until he has completely reformed. Austria confines such drunkards in institutions for the criminal insane, until they have recovered.

Both draft codes recognize the value of better protection of society by preventative action.

Immorality among persons of the same sex is increasing. So far women could not be punished for their acts; the new German code makes it possible. Men and women whose profession it is to lend themselves to such acts, might be condemned to hard labor. Austria's law are no way more lenient. From the few extracts it can be seen that there is not much difference in both draft codes as to the treatment of psychopathic cases. It would not be absolutely impossible with some good will to bring about a more uniform legislation on these matters in both countries.

VICTOR VON BOROSINI, Chicago.

**Presumption of Sanity and Burden of Proof in Homicide Cases.**—"The Criminal Court of Appeals of Oklahoma holds that, sanity being the normal and usual condition of mankind, the law presumes that every person is sane; hence the state in a criminal prosecution may rely on such presumption without proof relative thereto. But when the defendant in a homicide case produces sufficient evidence to raise a reasonable doubt of his sanity, the law then imposes on the state the burden of establishing the sanity of the defendant, the same as any other material fact necessary to warrant a conviction; and if, on consideration of all the evidence in the case, the jury have a reasonable doubt that the defendant at the time of the commission of the act charged was mentally

competent to distinguish between right and wrong, or to understand the nature of the act he was committing, he must be acquitted.

"The provision of the Oklahoma statutes that 'An act done by a person in a state of insanity cannot be punished as a public offense' does not in effect modify, but is supplemental to, the provision that 'All persons are capable of committing crimes, except those belonging to the following classes: * * * 4. Lunatics, insane persons, and all persons of unsound mind, including persons temporarily or partially deprived of reason, on proof that at the time of committing the act charged against them they were incapable of knowing its wrongfulness.' Under these provisions the test of criminal responsibility for committing an act, which is a crime under the law, is the mental capacity to distinguish between right and wrong as applied to the particular act, and to understand the nature and consequences of such act, or knowing its wrongfulness the defendant is not criminally responsible, if by reason of insanity he did not have the will and mental power to refrain from committing such act.

"It cannot be denied that the defense of insanity is frequently interposed in homicide cases when all other means of avoiding conviction and escaping punishment is hopeless. For this reason, insanity as a defense is almost always viewed with distrust, and it is a popular belief that it is the last resort of desperate criminals. Injustice is thus often done to a defendant who, in the judgment of his counsel, has legitimate ground for interposing this defense, and who must therefore at the outset overcome this sentiment of popular distrust. The court believes the danger is that indignation at the crime and distrust of this defense will cause jurors to be incredulous of its evidence, and thus the actually insane may be unjustly convicted. This result can only be avoided by fully and justly determining this issue the same as any other fact entering into the question of a defendant's guilt. The idea of punishment, when associated with this unhappy malady, is revolting to the instincts of humanity. Modern research has done much to elucidate what was formerly very obscure touching the true pathology of insanity, although no invariable or infallible test of the existence of insanity has ever been found."—From *Journal of the American Medical Association,* March 30, 1912. R. H. G.

**Prospectus of the School of Applied Criminological Science of the University of Rome.**—We have reached the point where even the sciences of crime and punishment can no longer be taught from the professional chair. Wherever oral platform teaching is not conplemented by practical exercises, students find it difficult to learn the method of research; nor can they become aware of, educate and perfect their personal intellectual tendencies for science, for the professions, or for public office. For this reason, in several modern Universities Experimental Laboratories of Law have been established for the teaching of private law, as well as public law, and the Social Sciences.

Modern Criminology cannot be only a theoretic exposition of philosophic and juridical principles—it must also be a physical and psychic study of the criminal, and of the environmental conditions that urge him to crime. It must be a technical investigation into the general and specific evidences of crime; it must be an experimental demonstration of the behavoir of defendants and witnesses, in especial, during criminal trials, and of sentenced prisoners in jail. It

must be an exact idea of partial reforms and of the effects of these which are every day being introduced into the life of all civilized countries. It must be an objective examination of actual criminal trials as they are found in the law reports, an examination that will analyze them as well from the psychologic and the social points of view as from the procedural and juridical sides, and so to discover how law and jurisprudence work out in the daily life of the people. It must also be a school of forensic oratory.

For these researches and practical exercises, the presence and the example of the Professor in the midst of his students, in the face of an actual man, or a real trial, or of evidence, is a very useful complement. The intsructor teaches the method of work while operating before the students, and, guided by the light of the scientific thought which he imparts from the cathedra disperses the clouds in which are wrapped crime and criminal, and prepares scientists, professional men and functionaries for their work. For these persons, practice is nothing but theory in action, and theory nothing but the live and fertile result of observation and experiment.

With these standards in view, and noting that there will now be ample room at the University of Rome, devoted exclusively to the Experimental Institute founded in 1905 in the Faculty of Law, the undersigned have decided to organize, in addition, a criminalistic section, thus instituting a School for the Application of Juridico-Criminal studies with the following courses:

Prof. S. Ottolenghi—Somatic and Psychic Examination of the Delinquent.

Prof. A. Giannelli—Clinical Study of Insane and Neuropathic Delinquents.

Prof. S. DeSanctis—Experimental Judicial Psychology.

Prof. A. Ascarelli—Practical Exercises in Legal Medicine.

Prof. A. Niceforo—The Technic of Judicial Examination of the Criminal. Criminal Sociology. Judicial and Prison Statistics.

Prof. E. Ferri, and Prof. S. Longhi—Theoretic and Practical Examination of Criminal Trials. Questions of Penal Jurisprudence and Legislation. Exercises in Debate Peculiar to Criminal Trials, and in Forensic Oratory. Exercises in the Technic of Prisons. R. F.

## COURTS—LAWS.

**Criminal Procedure in Canada.**—On page 29 of the last issue of this Journal, fourth line from the bottom, the statement, "but the accused may demand that he be bound over to prefer an indictment" should be, the "accuser."

At the bottom of the same page the statement is made that if a case is made out the accused is committed for trial with or without bail as seems just. This is not exactly correct. If the accused is committed for trial he can be admitted to bail only on an order from a judge of the county court or court of King's Bench. Under section 696 of the criminal code, however, when a person is charged with certain indictable offenses and the evidence is sufficient to put the accused on his trial but does not furnish such a strong presumption of guilt as to warrant his committal to jail, the justice, jointly with some other justice, may admit to bail. In other indictable offences under the same circumstances, one justice may admit to bail.

At the bottom of page 30 the statement is made that no bill can be laid before the grand jury by the Crown counsel without leave of the court for any offenses except such as is disclosed in the deposits before the magistrate. Section 873 of the criminal code provides that the Attorney General or anyone by his direction, or anyone with the written consent of a judge of any court of criminal jurisdiction or with the written consent of the Attorney-General may prefer a bill of indictment for any offense before the Grand Jury, and that any person may present a bill of indictment with the consent of the court, and this is so whether there has been a hearing before justices or not.

R. B. GRAHAM, Deputy Attorney-General, Winnipeg, Canada.

**Selection of Jurors in Philadelphia.**—The manner in which jurors are selected and drawn in Philadelphia is described by T. Elliott Patterson in the February number of the *Universtiy of Pennsylvania Law Review.* This duty is performed in Philadelphia by a "Board for Superintending and Managing the Drawing and Selecting Jurors," which consists of all the Judges of the Courts of Common Pleas and the Sheriff, making as now constituted, sixteen members. The Board also has a clerk. The Board must select, prior to December tenth, in each and every year, from the list of taxables a sufficient number to constitute the several panels for the ensuing year. This number is now about 12,000. As early in September as possible in each year the Board is furnished with a list of assessables, which is printed, divided up and bound in separate ward books. The Board then determines upon the number of names necessary for the coming year, and this number is apportioned among the wards. A day is then fixed and one of the Judges and the Sheriff draw alternately by lot ballots, each containing the name of a member and ballots each containing the number of a ward until the full allotment of names of members and the number of wards has been exhausted. The clerk marks in each book the name of the member to whom allotted and the proportionate number of names to be marked. When the names have been marked by the members they return the books to the clerk, who writes on separate slips of paper the name, address, occupation and ward of each person selected. The slips of each ward are checked with the ward book and a day is fixed on which the members bring in their respective allotment of slips, together with typewritten lists of the same. The sheriff produces the wheel, which is at all times in his custody, and the clerk of the Board produces the key. The Sheriff in the presence of the Board, unlocks the wheel, empties it of all names remaining over from the former year's drawing, and the members in turn deposit their respective allotments of written slips in the wheel, when the same is again locked and returned to the custody of the sheriff, while the key is taken by the clerk. When the sheriff receives the venires a day is fixed and the sheriff, in the presence of one of the Judges, unlocks the wheel and draws therefrom the number of names required, while the clerk records them in the jury book, which has been duly arranged in the order of the different rooms, and ruled and numbered in exact accordance with the number of jurors to be drawn for each room. Separate envelopes, endorsed to correspond with the jury book, are also prepared. In these the number of names required for each room are placed and at the end of the drawing they are handed up to the Judge to seal and initial, and returned to the clerk in

custody for the Board until the drawings for the entire year have been completed. The clerk of the Board then takes charge of the jury book and the envelopes, has the names, in alphabetical order, with the occupation, residence and ward of each juror arranged in typewritten lists for each court room called for in the venires. From these lists the sheriff prepares his notices to the persons whose names have been drawn for service, and each court room is furnished with printed copies for use at the trials. One of the copies of the lists furnished to each room is printed on cardboard, from which the names are cut by the clerk of the court or crier of each room and placed in the trial jury box of that room to be drawn promiscuously therefrom by the clerk of the court at the trial. E. L.

**The Delay in Wolter's Case.**—On March 24, 1910, Albert Wolter killed Ruth Wheeler, a 15-year-old child, who had gone to his flat in search of employment, responding to a decoy advertisement inserted by him in the newspapers. Two days later her friends found there the charred bones of her corpse concealed in the fire-place and in a burlap bag. The horrible details of the crime under indescribable conditions and the stolid indifference of the morally degenerate criminal, caused the entire population of the City of New York with one voice to demand speedy justice. The prosecution pressed the case with all celerity. Wolter was placed on trial on April 18, 1910, and was convicted on April 22. The lapse of but 34 days between the commission of his crime and the imposition of the death sentence upon him was a model of what can be done.

Wolter's attorneys took the inevitable appeal. This appeal could have been, it certainly should have been, disposed of within three months at the very most. The wheels of justice, however, moved as slowly now as they had moved speedily before. It was not until Jan. 29, 1912, that Wolter was made to pay the penalty for his infamous offense; in short, not until the law's delays in his case had assumed the proportions of a public scandal. Twenty-one months—almost two years—elapsed between his conviction and execution.

The defendant, be it noted, was not a rich man. There were no powerful interests aiding him. There was no hint of corruption. There was no resort to "influence." There was simply a typical, and by no means an unusual, example of the slow, cumbersome and uncertain administration of the criminal law. The notoriety of the case simply served to focus rather more than ordinary attention upon its demoralizing delays.

In a letter signed "R. C. T., New York City," appearing in the "Nation" of Feb. 8, 1912, the writer indicates that of 119 appeals in cases of first-degree murder in New York from 1900 to 1912, only 39 were disposed of within a year—in other words, less than one-third. Nine took over two years. In the Cascone case, for instance, the delay was 32 months; in that of Sexton, 34; in that of Patrick, 38; in that of Smith, 47. The delay of 21 months in the Wolter case was, therefore, in no respect unusual. It was merely the ordinary, everyday example of "breakdown."

This brand of justice fails to deter from crime. Sure, sane and swift administration of the criminal law exerts a quite different effect upon evildoers. Such delays as occurred in the Wolter case are fraught with most baleful con-

sequences. The learning, ability and ingenuity which is now spent in explanation and extenuation would serve, if rationally applied, to bring about a new era under which such abominations could not be. That such reform is perfectly feasible, English and Canadian experience conclusively demonstrates.

I. MAURICE WORMSER, University of Illinois.

**The Magistrates' Courts in the City of New York. A Review of the Chief City Magistrates' Annual Report for 1911.**—The Report of Chief Magistrate William McAdoo, of the 1st division of the City of New York, has just appeared. It is a very interesting report, and shows that a great deal of good has been done to better the conditions of Magistrates' Courts in the city. The City of New York has great influence over other places in the country, and it may be instructive to outline the report of the Chief Magistrate.

If I may speak from my own experience, I should say that great improvement has been made in the physical qualities of the courts. These qualities needed radical transformation. Some of the worst dens in the City of New York were the courts. They were dirty, squalid, ill-ventilated, foul, dingy caverns. There are still several courts, the physical conditions of which could be much improved. But it is cause for some joy to think that during the past year so much has been done to make the courts to which the poor in such large numbers go tolerably clean, moderately light, quiet, dignified, decent places for the administration of law. There is now, in addition to the better physical condition of the courts, a better moral atmosphere. Citizens, as a rule, are treated with courtesy and respect, and their complaints are listened to with patience and examined into with care. There is less suspicion of favoritism and of outside influences at work. People are beginning to feel that justice is more evenly and more honestly administered. Furthermore, the large troop of shyster lawyers that used to hang on and pick up cases in the courtroom and outside is gradually being exterminated. The Fifth District Court on One Hundred and Twenty-first Street in the Harlem District, is the busiest court in the city. Two years ago, in the immediate neighborhood, could be seen innumerable lawyers' shingles swinging in the wind and fastened to the walls of houses, and many windows were overspread with the names of lawyers. But now all those things have vanished; offices are empty and lawyers' signs are no more. Out of at least twenty-five offices there now remain two or three, and very likely these two or three will go out of existence in the very near future. This is due to the fact that the court rules are strict; no lawyers or persons of any sort are allowed to solicit business in the courtroom or in the halls outside. These rules, I am glad to say, are rigidly enforced. The Chief Magistrate is to be congratulated and thanked by the citizens of New York for making such a different place of the Magistrate's Courts from the places they once were. People get justice now without having to pay a high price for it, or, indeed, any price at all.

The report begins by taking up the changes that have been made in the courtrooms. The old platform, or bridge, in front of the bench has been removed. The defendant, his counsel and others are separated from the bench to a proper distance. There is now a witness chair. The iron grill work which was a screen running from seven to eight feet into the air from the top of

the bar enclosure, and which separated the audience from the proceedings within the bar enclosure, has now been removed. The arrangement and the construction of the complaint rooms is now such that privacy is properly protected, and the rooms are made accessible only to citizens who have business there. The freedom of the detention pens from any public or private exploitation, and the consequent security of the defendant from being solicited, imposed upon, or black-mailed, is another feature. In short, all the arrangements were made so that the courtrooms now resemble in all features the courtrooms of the higher courts.

Under the new law, a House of Detention for women was to be provided. No such building or quarters have, as yet, been built or rented. But the provisional House of Detention is now connected with the Women's Court. The Night Court for women is a court which has been much spoken of and which attracts a large number of people who profess to have a great interest in sexual and social problems. Four Magistrates hold this court. They are, therefore, under constant observation and subject to the closest criticism. The old law prescribed a physical examination for women who had been convicted, and if the physical examination disclosed the fact that the person was suffering from a venereal disease, she was sent to the hospital for treatment. This law created a furore among the women of the metropolis, and among some intelligent men, who maintained that no discrimination should be made with respect to sex. If a physical examination was prescribed for women, that examination should also be prescribed for men. Upon the ground of the law's unconstitutionality, the law was declared null and void. A new law ought to be drafted applying to both men and women. But for such a law there is at present very little hope. The women who are convicted for soliciting upon the streets are fined a sum not exceeding $10.00, or sent to the reformatories designated by law, or sent to the workhouse for a period of not more than six months; or, if they be first offenders, and they show hope of improvement, placed upon probation. The system of fining is an abominable system. Aside from the fact that it is money earned by the shame of some inhabitants of the city and placed into the city's coffers, it is unwise, because the effect of it is to keep the poor women in degredation all the more, since the fine is either paid by the women or, in nine cases out of ten, paid by the cadet, or the owner of the bedhouse of which the unfortunate is an inmate. In the former case the fining drives the woman to renewed exertions in breaking the law, and in the latter case the payment of fines puts the woman under obligations to those unspeakable male creatures who live on these women. It is interesting to note that the Chicago Vice Commission, after a long examination, also declared against fines. The Reformatory should be the place for most of these women.

The greatest element, perhaps, in the work of the Magistrates' Courts for the last year has been the increasing use of the summons. This is in substitution of the old warrant and of arrests without warrant. For a great many minor offences, especially violations of Municipal Ordinances, the summons has shown itself to be of great value. Out of 5,000 summonses issued by the policemen of the city only three were not heeded. And of the three persons who did not heed the summons by appearing in court the following morning to answer to the charge, two appeared the next day after the return date of the

summons. And for only one a warrant was issued. The method pursued by the policemen is as follows: Let us suppose a person is walking through the park. He steps upon the grass; he is approached by a policeman and told that he has done a wrong act; the pedestrian retorts in unkind language; the policeman gets angry; the pedestrian ditto, and so increases the anger of the policeman. The policeman thereupon pulls out of his pocket a book of summonses. He detaches one of the summonses and asks the name and the address of the individual before him; he puts the name upon the summons, and the address in his own pocketbook, and, presenting the summons to the former irate, but now very fearful law-breaker, he tells the violator of the Municipal Ordinance to appear in court the next morning before the Magistrate. Let us, again, suppose that an automobile has been traveling at a rate faster than the rate allowed by the law. Instead of the policeman's arresting the chauffeur on the spot, the policeman gives him a summons and tells him to present himself in court on a set day.

There is no doubt that for a great many of the small, petty violations of law the use of the summons saves a great deal of time and annoyance to the public, and a great deal of money to the city. Its use should be extended. It has been repeatedly shown that the privilege involved in its use is appreciated.

The Chief Magistrate says that there has been a great deal of criticism of Magistrates. That is true. It is true also that criticism of Magistrates in cities is a perennial happening. These men are charged with paying very little attention to cases, with becoming irritable too easily, and especially with minimizing serious complaints. These charges are sometimes based upon truth. But a great deal of allowance ought to be made in cases of these men who sit upon the bench and pass upon eighty cases a day. The solution of the problem here is to be found in decreasing the amount of work that is required of Magistrates by adding to the number of judges. And, in fact, we see the Chief Magistrate asking for at least two more judges, and recommending the re-districting of the city, in order that certain courts of town may not be crushed with business.

The probation system worked admirably. The new law provided for the appointment of ten men and ten women officers. Of course this number is very meagre, and in order that effective work may be done the number should be increased at least three-fold. But we should not blind ourselves to the fact that these twenty people have done much to lessen the burden of families and to make life better worth living than it used to be. The system has especially been serviceable in the Domestic Relations Court. Fewer husbands who neglected to support their families have now to be sent to prison, and more are made to pay the amount imposed by the court. The probationers are now impressed with the fact that probation means something. If they break it they go to prison. The former method had no teeth in it. The present probation officers have been kind and attentive, and have shown a large human sympathy. They have brought about in the Domestic Relations Court fifty-two reconciliations. This figure may or may not mean a great deal to the outsider, but those who have had any experience in this court, as has the writer of this note, will be aware of the fact that the number indicates something which is not specious, but real. Many of the people who go to the Domestic Relations Court are for-

eigners, and they do not yet speak the English language. Fifty-one per cent of those who came last year were not citizens. Very few appeals have been taken from the two Magistrates who hold this court. Deserted wives no longer have to elbow with rowdies and murderers, loafers and solicitors, in other Magistrates' Courts, and take their chances for redress with hundreds of other cases.

The Night Court for men is a necessity. A large number of men and boys who are arrested for trivial offences are brought here, and within a few hours they are acquitted, fined, imprisoned, bonded, or reprimanded. Those who are discharged go back to their homes and to their work the next morning. The Day Courts are saved additional labor, and the old-time bail-man is no more required. The work of the court is very large. Both the Night Courts for men close at 1 A. M. unless the police notify them that additional cases are on the way.

The Chief Magistrate gives a lurid picture of the menacing army of boys and young men between the ages of 16 and 25 who compose a very troublesome element in the life of the city. They have no reverence for anything, are devoid of respect for law, are subject to no parental control, are cynical, viciously wise beyond their years, utterly regardless of the rights of others, and firmly determined not to work for a living. They terrorize the occupants of public vehicles; they disturb the peace of the neighborhood, and they have no regard for common decency. The problem presented by these youths is a difficult problem for the Magistrate. The Chief Magistrate recommends that the Magistrates make commitments in certain cases of these offenders between the ages of 16 and 30 to the New York City Reformatory for Misdemeanants.

The machinery of the Courts has been systematized and centralized. The Chief Magistrate's office is now a central authority for information, publicity, and redress of grievances. All cases are reported to this office by cards, which are properly sorted and looked after when they reach the office. The names of all bondsmen and the amount of bond are sent there and a book is kept showing the names of those who go on bonds. This serves as a check upon professional bondsmen. All returns on appeal are made in this office. All finger-prints are sent there and kept in steel filing cases. The Chief City Magistrate has charge of the supervision and direction of all employees connected with the courts, and he has the power of arbitrary suspension. His office keeps daily and minutely careful inspection of the work of these employees, and so conduces to more finished work on the part of the subordinates. Nearly all the warrants issued by the police for the suppression of gambling and disorderly houses are issued by the Chief City Magistrate and made returnable in the District Court. These numbered last year some thousands. The probation system is centered in this office. All questions of amendments to existing laws which may affect these courts are referred to this office by the city authorities for information and advice.

Two joint mettings of the Manhattan Board of Magistrates and the Brooklyn Board of Magistrates, the former Board belonging to the First Division, and the latter Board belonging to the Second Division of the city, are annually held in order to beget uniformity of procedure and practice.

The Magistrates' Courts are courts through which over half a million in-

habitants of the city pass every year. Most of these persons are foreigners. They judge us by what they see in these courts as to whether justice is honestly and impartially administered in this country. The Magistrate holds a very responsible position. He should have courage, fairness, patience, integrity, intelligence, and humanity. At his best, he should have a vocational temperament, in addition to his knowledge of the law, and his high intelligence. Those people who come before him are as children. They are just opening their eyes to see the light of our institutions. The Magistrates have it in their power to make it possible for them to see this light, and to make them devoted lovers of our country. R. F.

**Attitude of Kentucky Courts Toward Technical Errors in Criminal Cases.**—The case of *Overstreet v. Commonwealth,* decided by the Kentucky Court of Appeals in March, 1912, and reported in Volume 144 Southwestern, page 751, is an example of the fact that the Kentucky Court of Appeals does not permit technical errors in criminal cases to defeat the administration of justice. There is not, and has not been for many years, any complaint about reversals by the court for immaterial reasons. On the contrary, the established rule of the court is not to reverse a case for any error unless it substantially prejudices the rights of the accused. The practice in the court is fully and accurately stated in the Overstreet case, and furnished quite a contrast to the rule that prevails in some jurisdictions.

OSCAR E. WOLFE, Frankfort, Kentucky.

**An Example of Canadian Justice.**—The following is an account of a case before the Court of Appeal in Toronto, January 16th, 1912, which had been tried before Justice Riddell and a jury, November 13th, 1911. It was originally published in the Ontario Weekly Notes, March 6th, 1912:

The prisoner was tried on a charge of murder before Riddell, J., and a jury, at Toronto, on the 13th November, 1911. It appeared that he had been watching for one Longheed upon the street, and shot him several times, killing him almost instantly. The defence was insanity. The medical evidence was, that the prisoner was insane, incurably so; that he understood the nature and quality of the act, and that it was wrong in the sense that it was forbidden by the law; but he had lost the power of inhibition, and could not resist the impulse he had to kill Longheed.

Riddell, J., charged the jury: "It is not the law that an insane man may kill whom he will without being punished for it. It is not the law that an insane man may kill another and escape punishment simply because he is insane. There have been hundreds of insane persons who have killed others, and who have been executed, both in England, whence we take our law, and in Canada, in which we live. * * * Life would not be safe under such circumstances. There is one in every three hundred persons in most countries * * * of persons who are insane, in one way or another, and it would never do if the law were such that one man out of every three hundred—that is, in Toronto, something over a thousand people—could go out and slay at will without being brought to task and punished by the strong arm of the law. * * * A man is not to be acquitted on the ground of insanity unless his mind is so affected by the insanity

that he is not capable of appreciating the nature and quality of his act and of knowing that such act was wrong. It is not the law here, as it is said to be in some countries, that, if an insane person, who is capable of appreciating the nature and quality of the act and of knowing that it is forbidden by law—for that is the meaning in this connection of the word 'wrong'—yet has what is called an impulse to do the act, which impulse he cannot resist, then he is to be acquitted on the ground of insanity. * * * I charge you as a matter of law that it is not enough for the prisoner to have proved for him * * * that he had lost the power of inhibition—the power of preventing himself from doing what he knew was wrong. * * * It is your duty to find a verdict of guilty if you find that the prisoner killed Longheed * * * and at the same time it has not been proved to your satisfaction that the condition described by Dr. Bruce Smith was not his actual condition—in other words, if he killed the man, and it has not been proved that his condition was not as Dr. Bruce Smith says it was, he is guilty of murder, and it is your duty to find so."

The prisoner was convicted and sentenced to death.

Riddell, J., refused to reserve a case upon the question whether the prisoner, being undoubtedly insane, could be executed.

Riddell, J., reserved a case, upon the above charge, as follows: "Was I wrong (to the prejudice of the prisoner) in charging the jury that, even if the prisoner was insane, if he appreciated the nature and quality of the act and knew it was wrong, they should not acquit on the ground of insanity, and that the existence of an irresistible impulse did not (even if they believed it to exist) justify an acquittal on the ground of insanity?"

The case was heard by Moss, C. J. O., Garrow, Maclaren, Meredith, and Magee, J. J. A.

T. C. Robinette, K. C., for the prisoner.

J. R. Cartwright, K. C., and E. Bayly, K. C., for the Crown, were not called upon.

The court answered the question in the negative, and affirmed the conviction. WILLIAM RENWICK RIDDELL, H. J. C.

**To Prohibit Publishing Details of Crimes and Accidents in the District of Columbia.**—Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that it shall be unlawful for any person, corporation, or association to print or publish in any newspaper or other publication in the District of Columbia an account of any murder, or alleged murder, or any other actual or alleged crime, suicide, or other accident, injury, or tragedy of any kind wherever the same may have been committed or happened, or alleged to have been committed or happened, other than a mere statement of the fact that such a crime, tragedy, or accident has happened or is alleged to have happened, without details or comments of any kind with respect to such crime, accident, or tragedy, or in respect of, or about, any person connected with or related to or alleged to be or to have been connected with or related to the same.

Sec. 2. That any person, corporation, or association who shall violate any of the provisions of this Act shall be guilty of a misdemeanor and shall be fined not less than five hundred nor more than five thousand dollars, to which

may be added imprisonment in the District Jail or Workhouse for not exceeding one year.

The above bill was drawn and introduced by J. D. Works, U. S. Senate.

**Authority of County Attorneys in Kansas.**—Kansas has statutes authorizing county attorneys to subpoena witnesses and to make investigation (before starting prosecution) of violations of liquor laws, bucket shops and gambling places, similar to the powers of grand juries (grand juries are rarely used in Kansas). Recently the attorney-general has publicly expressed the view that such investigations could be made possible in felonies as well as a few misdemeanors. The writer expressed the same view at a law enforcement meeting at Topeka last winter.

J. C. RUPPENTHAL, Judge of 23rd Judicial District, Russell, Kan.

**Proposed County Court for Philadelphia.**—An Act to establish a county court for the County of Philadelphia and prescribing its powers and duties regulating the procedure therein and providing for the expenses thereof.

Section 1. Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met and it is hereby enacted by the authority of the same, That in the County of Philadelphia there shall be and hereby is created a court of record to be known as the County Court, to be composed of one judge for each 200,000 of population or fractional part thereof, where such fractional part exceeds 100,000 such population to be determined from time to time by the latest census of the United States.

Section 2. The judges of said court shall be learned in the law, shall be elected by the qualified electors of the County of Philadelphia, shall hold office for a period of ten years, if they shall so long behave themselves well, and shall receive a salary of $7,000 per annum, payable monthly, excepting the presiding judge, whose salary shall be $7,500 per annum. The term of office of the elected judges of the court shall begin on the first Monday of January next following their election.

The first judge or judges of said court shall be appointed by the Governor by and with the advice and consent of the Senate, if then in session, and shall hold office until the first Monday of January following the next general election, at which his or their successor or successors shall be elected.

The first elected judges of the court shall be chosen at the general election next following such appointment. Succeeding elections for the said office shall be held at the general election preceding the expiration of the term of any judge, or at the following election, in case of vacancy by death or otherwise where such vacancy occurs not less than three calendar months before such general election. The vote for said judges shall be cast and counted according to law and return thereof shall be made without delay by the prothonotary of said county to the Secretary of the Commonwealth, who shall ascertain and certify the result to the Governor, who, in turn, shall issue a certificate to the person or persons so elected.

Whenever a vacancy occurs by dealth or otherwise in the office of judge or when upon the taking of any new census the said county shall be entitled

to an additional judge or judges, the Governor shall appoint in the manner provided by law.

At the organization of the court the Governor shall designate one of the persons appointed by him as presiding judge of the court and shall designate the priorities of the expirations of the respective commissions of the other judges, and upon other judges being elected to said court for the same term they shall draw lots for priority of expiration of commission, the result of which they shall certify to the Governor, and the judge holding the original commission first expiring shall at all times thereafter be commissioned as the presiding judge of said court.

Section 3. The court shall be open 12 months in the year for the transaction of business at the county seat.

Section 4. The County Court shall have a seal for the use of said court, which shall contain the name of the court and the word "seal," which seal shall be affixed to all write of summons, transcripts and other official certificates issued by or under the direction of said court. The seal of the court shall be in the custody of the clerk of said court.

Section 5. The Prothonotary of Philadelphia County shall be the Chief Clerk of the court hereby created and shall assume and perform all of the duties of clerk thereof. All other necessary assistants shall be appointed by said court and their compensation shall be fixed and paid out of the treasury of Philadelphia County in the manner in which other county expenses are now fixed and paid by law, and the duties of such assistants (except as in this act set forth) shall be determined by a majority of the judges of such court.

Section 6. The court hereby created shall have jurisdiction—

(a) In all civil actions, both in assumpsit and trespass, wherein only a money judgment is sought to be recovered of not more than $1,000, and in all actions of replevin in which the sum demanded or the value of the property replevied does not exceed $1,000, except in cases where the title to lands or tenements may come in question.

(b) In all proceedings brought against any husband or father wherein it is charged that he has without reasonable cause separated himself from his wife or children or from both or has neglected to maintain his wife or children and in all proceedings where any child of full age has neglected or shall neglect to maintain his or her parents not able to work or of sufficient ability to maintain themselves.

(c) In all cases of appeals from summary convictions and from judgments in suits for a penalty before a magistrate or court not of record as provided by law.

(d) In all cases involving the jurisdiction of the Court of Quarter Sessions of the Peace, wherein any defendant or defendants are juvenile prisoners, covering all the jurisdiction now maintained by what is known as the "Juvenile Court."

(e) The jurisdiction hereby conferred in clauses (b), (c) and (d) shall be exclusive.

Section 7. The procedure in said courts in all civil actions shall be substantially as follows:

(a) The plaintiff may file with a clerk of the court at the county seat a written statement of his demand verified by affidavit, or may make to the clerk his complaint orally, whereupon the clerk shall reduce the same to writing, which shall be signed and sworn to by the plaintiff, and said clerk shall thereupon issue a summons under the seal of the court, requiring the defendant to appear at a time and place designated in said summons to answer the plaintiff's complaint and a copy of the plaintiff's statement however prepared shall be served with the writ. The time of said hearing shall be not less than ten days nor more than twelve days from the date of said summons.

(b) Upon the date fixed in said summons or such other date to which the cause may have been duly adjourned by order of the Court, and which shall not be less than seven days after service of the summons upon the defendant, the parties shall attend with their witnesses and the cause shall be heard by one or more of the judges of said court, who shall hear the parties and their witnesses and counsel, if any, and the decision of the judge or judges hearing the cause shall be rendered at the conclusion of the trial or at such other time not more than five days thereafter, as may then be designated for that purpose, and said judgment shall forthwith be entered upon the docket of said court.

(c) In all actions for the recovery of money on any contact express or implied the defendant shall at least two days before the time fixed for hearing the summons or within such further time as the Court may allow, upon cause shown, file with the clerk of the court an answer duly sworn to setting forth fully the nature and character of his defense to the plaintiff's demand or he may make a statement of such defense orally to the clerk, which shall be reduced to writing by the clerk and sworn to. If no answer be filed the Court upon the trial shall enter such judgment as upon the plaintiff's statement plaintiff may be entitled to recover, and if an answer be filed as aforesaid all material averments of the plaintiff's statement which are not denied by the answer shall be deemed and taken to be true. In actions *ex delicto* the Court shall enter such judgment as the plaintiff may be entitled to recover upon the evidence.

(d) In the action of replevin, desertion and non-support cases, juvenile criminal cases and appeals from summary convictions and judgments for penalties, the practice shall be as is now provided by law.

(e) Service of the writ of summons and of copies of plaintiff's statements shall be made in the same manner as is now provided by law for the service of writs of summons in personal actions and may be made by the sheriff of the county, by a constable of the county, or by such persons as may be appointed by the Court for that purpose, as shall be determined by the Court.

Section 8. Upon request in writing filed with the clerk by the plaintiff at the time of filing his statement of claim or by the defendant upon filing his defense, accompanied by the payment of a jury fee of $4 by the party making such request to be taxed as part of the costs of the case, the Court shall direct trial by jury in the manner now provided by law, the jurors to be summoned and paid as they are for the Courts of Common Pleas of said county, provided, however, that when a jury trial is demanded the Court shall make

a separate list of such cases from time to time as are put at issue and proceed to the trial and determination of said cases at the county seat.

Section 9. Either party may within 10 days after the entry by said Court of any judgment in any civil action appeal therefrom to the Court of Common Pleas of said county by taking and perfecting an appeal in the manner following:

The party appealing shall procure from the County Court a transcript certified under the seal of the court showing the proceedings had in said cases and shall file the same in the office of the Prothonotary of said county, and at the time of filing the same shall also make affidavit that the said appeal is not taken for the purpose of delay. If such appeal be taken by the plaintiff he shall give bond with surety conditioned for the payment of all costs accrued or likely to accrue, and if the appeals be taken by the defendant he shall give bail absolute with surety for the debt and the interest and costs accrued and likely to accrue. The sureties upon such bonds shall be approved by a judge of the County Court within 10 days after the entry of judgment in any civil action. Either party may apply to any Court of Common Pleas of said county or any judge thereof for leave to appeal the case to the Common Pleas Court. And if such appeal be allowed, then upon filing the certified copy of said order or allowance, the transcript shall be filed with the Prothonotary as above provided, but said appeal shall not operate as a supersedeas unless the Court or judge allowing such appeal shall so order.

Any party shall be entitled within 10 days from the date of judgment or within such further time as the Court of Common Pleas may grant to a writ of certiorari, to remove the record to any Court of Common Pleas of said county in the manner as now provided by law, in regard to writs of certiorari issuing out of said Common Pleas, but such certiorari shall not operate as a supersedeas unless bail absolute for said judgment, interest and costs shall be given and approved by the Court of Common Pleas, from which such writ of certiorari issues.

Section 10. A defendant who shall neglect or refuse in any civil action brought in said court to set off his demand, whether founded upon bond, note, penal or single bill writing, obligatory book accounts, or damages of assumption against a plaintiff, which shall not exceed the sum of $1,000, shall be and is hereby forever barred from recovering against the party plaintiff by any after suit, but in case of judgment by default the defendant, if he has any account to set off against the plaintiff's demand, shall be entitled to a re-hearing before said court within 30 days on proof being made either on oath or affirmation of the defendant or other satisfactory evidence that the defendant was absent when the process was served and did not return home before the return day of such process or that he was prevented by sickness of himself or other unavoidable cause, and the said court shall have power to render judgment for the balance in favor of the plaintiff or defendant as justice may require. Each party shall have the same right of appeal or certiorari from said judgment as though a separate suit had been brought therefor.

It shall be the duty of the defendant desiring to avail himself by way of set-off, defalcation or recoupment of his demand against the plaintiff to file a statement of such counter-claim with the proper clerk of the court on or before

the date designated in the writ of summons for the trial of said action, unless the time for the filing of such statement be extended by the Court.

Section 11. Upon rendition of the judgment of the County Court the party to whom such judgment is awarded shall be entitled to file in the office of the Prothonotary of said county a transcript from the docket of the County Court, showing the judgment so rendered, which judgment shall be entered on the judgment index of said county and from the date of such entry shall bind the real estate of the party against whom judgment is rendered, and thereupon the judgment creditor shall be entitled to preserve and continue the lien of or enforce such judgment by execution attachment or other process in the same manner and to the same extent as though it had originally been entered in the office of the Prothonotary upon confession. The Prothonotary shall apportion the said judgments among the several Courts of Common Pleas of said county as nearly equally as practicable. But upon perfection of an appeal from such judgment or the granting of a certiorari operating as a supersedeas as herein provided the lien of such judgment on real estate shall be thereby removed.

Section 12. The said court shall cause to be kept proper dockets in which a record of all proceedings in each case brought in said court shall be entered, and which in all actions shall show the names of the parties, their counsel, if any, and the addresses of the parties or their counsel, where and upon whom service of notices may be made, the date on which the complaint was made, the manner and date of service of summons upon the defendant, the date of trial, the nature of the plaintiff's demand and of the defendant's answer, and the kind of evidence upon which the same may be found, the judgment of the Court and the date upon which the same was rendered.

Section 13. The said court shall have power to permit such amendments to be made, either in respect to the names of the parties, the pleadings, or its records, as shall be necessary for the ends of justice, and it shall also have power to grant adjournments to regulate the manner of serving notice upon the parties and their counsel and to extend the time within which any act may be required to be done by the provisions of this act, excepting only the time within which an appeal is required to be taken and perfected and the decision of the Court rendered after trial. Said court shall have the power to open or strike off its judgments upon proper cause shown at any time prior to the perfecting of an appeal therefrom, and thereupon a certificate of the order of this court shall be filed in the office of the Prothonotary by the party in whose favor such order is made, and any lien theretofore obtained by filing a transcript of such judgment shall be thereby removed.

Section 14. The said court is empowered to issue writs of subpoena under its official seal into any county of this Commonwealth to summon and bring before the Court any person giving testimony in any cause or matter pending it under the penalties hitherto appointed and allowed in such cases under the laws of this Commonwealth, but no subpoena shall issue to summon a witness from any other county of the Commonwealth except after an order made by a judge of said court upon cause shown.

Section 15. The said court shall have power to establish rules for the conduct of business of the court and from time to time alter and change the same,

but no rule shall require the parties to file written pleadings other than as required by the provisions of this act. Any clerk of said court shall be empowered to administer oaths or affirmations.

Section 16. The Court may establish rules authorizing the taking of testimony by deposition of witnesses residing out of the county or State, or who, by reason of age, sickness or other infirmity are unable to attend the trial or whose presence cannot reasonably be had and may authorize the taking of such testimony in such manner not inconsistent with the laws of this Commonwealth as the Court shall deem proper.

Section 17. Every party shall have a right to appear and to plead his cause in person or by counsel admitted to practice in the Courts of Common Pleas of said county.

Section 18. The County Commissioners of the said county shall provide suitable accommodations and facilities for the transaction of the business of the said court.

Section 19. The fees and costs for all witnesses, writs, entries and other services charged for shall be the same in amount as the charge for the corresponding fee, writ, entry or service in the Courts of Common Pleas of said county and shall follow the judgment.

But no costs shall be required to be deposited or secured in advance except in the case of non-resident plaintiffs upon order of this Court.

Section 20. All acts or parts of acts inconsistent herewith are hereby repealed.

EDWIN M. ABBOTT, Philadelphia.

**Decision of the Italian Court of Cassation.**—The January-February number of *Il Progresso del Diritto Criminale,* contains several decisions by the Court of Cassation—the highest court of criminal appeal—which show that the Italian judge deserves the title of jurist. He has a knowledge of psychology and sociology which he brings to bear upon his legal decisions, making them juridicially. The Court, however, in a recent divorce case (report below), have justly shown that it has the stamina necessary to enforce the law as it finds it—a rare quality in these days of recall.

In two recent decisions, the defense of uncontrollable impulse has been admitted, governed however, by a juridicial and psychological regulation. Provocation can now be pleaded in the Italian criminal courts to lessen the sentence, but only when the "unjust" (provoking) action was instantaneous and the reaction immediately followed. The use of the word reaction deprives the unwritten law of all its objectionable features.

In another case, the Court disposed summarily of an appellant, who defended a charge of assault and battery on a man on the grounds that it was but an incident to the commission of a felony (the rape of the prosecutor's daughter) and that, therefore, the defendant had been already punished once in his conviction for that crime.

JOHN LISLE, of the Philadelphia Bar.

**An Italian Divorce Case Reported by Professor Tuozzi.**—Professor Tuozzi of the University of Padua, reports an interesting divorce case in the January-February number of *Il Progresso del Diritto Criminole.* Mrs. X was

guilty of adultery, upon the discovery of which fact, her husband in a fit of jealousy, killed her lover. For this he was convicted and served his term. Upon his release, however, he did not go back to his wife but lived openly with another woman. Four years after his discovery of Mrs. X's adultery, she began divorce proceedings, to which he successfully pleaded under the statute the similar offense on her part within five years. She waited a year and again filed her libel, to which he this time pleaded, under the statute, more than three months' notice of his offense. The two lower courts held this plea good, because the wording of the statute was that "three months' knowledge of the fact" was a bar. Their decision was reversed on appeal to the Court of Cassation, on the grounds that while her disability under the five year provision existed, she could not legally have knowledge of "the fact." This decision Professor Tuozzi thinks—and we agree with him—had more logical than juridicial value. From the narrow legal standpoint, the first provision was not of the nature of a statute of limitations or disability proper, but was a defense. From the broader point of view, it effected injustice in allowing the original guilty wife to go free for all time, while it punished the husband, who at most had only followed her lead. Professor Tuozzi points out how much better the Roman law was in this particular, which required the libellant—who could, however, only be the man—to prove his life clean ("pudice vivens"). The decision, however, can be justified if the court's view of the provision for five years is correct; i. e. that it was merely a disability, but, if this provision was not a disability but an essential part of the right, it seems that the decision was wrong. The Court's willingness, however, to enforce the law as written in the face of criticism is one that may commend itself to many American conservative publicists at this time.

JOHN LISLE.

## PENOLOGY.

**Prison Contract Labor.** "While Governor of New York Mr. Roosevelt said in a message to the Legislature: 'Under the present laws (of New York) none of the products of our own prisoners are put upon the open market to compete with the products of free labor; but the products of convicts of other states and countries are brought into this state and sold in competition with the products of our free labor. As under the decisions of the courts the state is powerless to prevent this, it is to be wished that there could be National legislation on the subject.'

"Such National legislation is now before Congress. Representative Charles F. Booher, of Missouri, has introduced a bill to the effect that all convict-made goods transported into any state or territory shall, upon arrival, be subject to the laws of such state or territory just as if they had been manufactured within its own borders. This bill has been reported favorably by unanimous vote of the Committee on Labor, and has passed the House. It has yet to be acted upon in the Senate. If it passes, it will relieve the manufacturers and the free laborers of New York, Illinois, Iowa, Louisiana, and South Dakota of the baneful competition of convict-made goods. These states have what is known as the public use system for the disposal of such goods. In these states prison-made goods, instead of being thrown upon the open market in cut-throat com-

petition with the products of free labor, must be purchased by the state departments and institutions at the prevailing markets rates for their own use. It is probable that other states would enact similar laws were it not for the knowledge that the purpose of such legislation is in practice largely defeated by the sale of prison-made goods brought in from other states. Should the Booher bill be enacted, these state laws would become fully effective.

"Under the prison contract labor system the State sells the labor of its convicts to contractors for a small amount per head per diem—usually forty to sixty cents. The contractor then extracts from the prisoner as much work as he can. The more he can force out of him, the greater the profits on his contract. He is in effect the master, and the prisoner his slave. There is, however, this important difference between the contractor's relation to the convict and that of a master to his slave. The master owns his slave, and hence has a selfish interest in his life, health and efficiency. The contractor does not own the convict, and hence has no selfish interest in his physical well-being. If the convict dies, it costs the contractor nothing, and there are plenty more to take his place. Is it any wonder that a leading prison contractor once exclaimed, "This beats having slaves all hollow!" Yes, this modern survival of slavery has a great advantage, from the dollars and cents point of view, over the old form.

"The prison contractor is supplied free of rent with factory buildings, storage warehouses, and grounds inside the prison walls. He is also given free heat, light, and power. The chief commodities made by prison contractors are hollow-ware, shirts, overalls, chairs, boots and shoes, brushes, mats, and brooms. It is claimed by prison contractors and the advocates of the system that it fits the convicts to earn an honest living when they go out. Hollow-ware making is practically monopolized by prison contractors. Therefore the discharged prisoner who has learned this trade must commit another crime and be recommitted to prison in order to practice it. The making of shirts and overalls is, of course, needlework. Inside the prisons men do this work, while outside it is done by women. When the man of a family is sent to prison, his wife and daughter must very often gain their subsistence in the needle trades. In such cases the convict husbands and fathers are placed in cut-throat competition with their wives and daughters. The State first deprives the innocent women of a family of the support of the men, and then forces the men into ruinous competition with them. Meantime these men are being trained in a woman's trade which they do not and will not follow on being released. The making of brooms and mats is the industry in which the blind chiefly excel. It is the trade in which their infirmity appears to be least of a handicap. Factories for the blind for the making of brooms and mats are being established both through State aid and by private philanthropists. The convicts in this trade depress prices and wages while in the prisons, and after their release, if they use their training at all, they compete directly with the blind. In all the prison contract trades there is a vicious circle. By their cheap labor in the prisons the convicts lower prices and wages in these trades outside. When they come out, in the rare cases when they have opportunity and inclination to follow their prison trades, they must do so at a scale of wages they themselves have lowered.

"Those familiar with the conditions have long felt that convict-made goods spread diseases. The National Committee on Prison Labor has recently gathered data which not only prove this to be the case, but provide legal evidence sufficient tto establish the fact in court. In a recent investigation, for instance, of a prison in Maryland, the investigators came upon such cases as this: In the shop of a shirt company 190 men were at work. The company paid the State for their labor at the rate of thirty-five cents per day per man. The shop turned out about two hundred dozen shirts a day.

"The doctor admitted that many of the workers had tuberculosis, and many others looked as if they had. The investigators inquired about one hollow-chested man who seemed particularly ill. They learned that he had been sick for five days, but the doctor had been too much engrossed with fifteen cases of typhoid fever in the prison hospital to attend him. Furthermore, as the hospital was full, the doctor had no means of caring for him, even if he had had the time. This sick convict expectorated feebly over shirts and packing-cases as he worked. These very shirts, packed in these same cases, have since been distributed and sold in various parts of the country. The shop was so dirty that if it had been a sweatshop on the East Side of New York City it would have been closed by law until properly cleaned and fumigated. Two convicts with mumps were found lying with their bandaged heads resting on piles of shirts. In short, the shirt company was distributing throughout the community mumps and tuberculosis as well as shirts.

"A bill similar to the Booher Bill has been defeated in Congress for the past fifteen years or more. If the Booher Bill is passed by the Senate and signed by the President, it will sound the death knell of the prison contract labor system in this country. There are powerful and sinister forces seeking to prevent, now as formerly, this outcome."—From *The Outlook*, P. 13, May 4, 1912. R. H. G.

**Probation Rules of the Children's Court of Buffalo.**—Rule 1. Chief Probation Officer.—The probation officer designated by the judge to act as chief probation officer, shall, subject to the direction of the judge, be the administrative head of the probation department of the court. He shall superintend the work of all other probation officers; require them to observe the provisions of the probation laws and of these rules; keep informed concerning their work and conduct, and report to the judge concerning negligence, incompetency or misconduct on the part of any probation officer; secure and instruct volunteer assistants; have general charge of the probation offices, attend to the official correspondence of the department; superintend the making of reports by probation officers, and the keeping of records and accounts; oversee all financial transactions of the department; secure the co-operation whenever necessary of officials and other persons and agencies in Buffalo and elsewhere; compile statistics; publish an annual report; and perform such other duties as are prescribed in these rules and as man properly devolve upon them. He shall study the needs of the probation system, and when necessary make recommendations to the judges for its improvement. On or before the first day of February of each year, the chief probation officer shall file with the judge a statement of the appropriations needed by the probation department for the ensuing fiscal year.

Whenever the chief probation officer is absent from the office for any substantial length of time the judge shall designate another probation officer to act as chief probation officer during such period of absence.

Rule 2. Probation Officers.—All salaried and all volunteer probation officers shall observe all the provisions of the probation laws and of these rules, and shall obey all lawful instructions and orders of the chief probation officer, provided that the chief probation officer shall not make unreasonable demands on the time or convenience of volunteers. All salaried probation officers shall devote their entire time to probation work, and shall have no other occupation, business or profession. Whenever any salaried probation officer is incapacitated by illness or is otherwise unable to perform his duties, except during vacation, he shall immediately notify the chief probation officer; and any volunteer probation officer having a probationer under his care and about to be out of the city for more than one week, shall also notify the chief probation officer. Each salaried probation officer shall have an annual vacation of two weeks.

All probation officers shall respect scrupulously the constitutional rights of all children and other persons with whom they have dealings. No probation officer shall represent to any child or other person that by virtue of his office he possesses any powers or rights which he does not possess. No probation officer shall attempt to proselyte or in any way to interfere with the religious beliefs or practices of any child or adult brought before the court. No probation officer shall use his position for political or partisan purposes.

Rule 3. Offices.—There shall be a probation office in the Juvenile Detention Home, and another in connection with the part of the court devoted to the trial of adults or at such other places as may be decided upon by the judge. Each office shall regularly be kept open during such hours as shall be decided upon by the chief probation officer with the approval of the judge.

Rule 4. Supplies and Expenses.—All supplies for the probation department shall be ordered and distributed by the chief probation officer upon approval by the judge. Each salaried probation officer shall keep an itemized account of all expenses incurred in the performance of his official duties, and on the first day of each month shall submit to the chief probation officer a bill, duly sworn to, for the preceding month's expenses. No such bill shall be paid unless approved in writing by the chief probation officer and the judge.

Rule 5. Preliminary Investigations.—Unless otherwise directed by the court or judge, the assignments of probation officers to make preliminary investigations concerning children and adults brought before the court shall be made by the chief probation officer. In making such investigations no probation officer shall question any defendant as to his guilt or innocence, or shall endeavor to secure information on this question. The reports of probation officers on preliminary investigations shall be in writing, and shall state the sources from which the statements made were obtained. So far as desirable and practicable the probation officer making an investigation shall appear personally before the court or judge to explain or supplement the written report. Unless otherwise ordered by the judge, a copy of all reports of preliminary investigations shall be filed with the probation records.

Rule 6. Placing Defendant on Probation.—No child or adult defendant, unless well known by the judge or probation officer, shall be placed on pro-

bation until after a preliminary investigation by a probation officer. When a child or adult defendant is placed on probation, the probationer, as soon as possible thereafter, shall be instructed concerning his probation, by the chief probation officer, or in his absence by another probation officer. Such chief or other probation officer shall give the probationer a written statement of the period and conditions of the probation and take a written acknowledgment therefor, and shall instruct the probationer concerning the purposes and requirements of the probation. If the probationer has been ordered by the court to pay, while on probation, restitution, reparation or a fine, such probation officer shall instruct the probationer concerning the payments he is to make, and shall furnish him with a copy of the official receipt he is to receive for each payment. The chief probation officer, unless otherwise directed by the judge, shall designate the probation officer who is to supervise the probationer and shall arrange for an early meeting between the probation officer and the probationer. The chief probation officer, with the consent of the judge, may at any time transfer a probationer to another probation officer. Female probationers shall be placed under the supervision of female probation officers.

Rule 7. Period and Conditions of Probation.—Unless otherwise directed by the court or the judge, the original probationary period shall be one year, subject to such modifications as the court or judge may subsequently order.

The judge may authorize the chief probation officer to determine requirements of probation supplementary to those determined by the court or judge.

Rule 8. Supervision and Aid of Probationers.—Each probation officer, so far as practicable, and unless otherwise directed by the chief probation officer, shall visit each probationer under his care at least once a month, and shall require each such probationer to report in person to him at least weekly. The chief probation officer shall see that the reporting by probationers to the probation officers is carried on in such a manner as will secure reasonable privacy and will minimize the mingling of probationers. Neither boy and girl probationers, nor juvenile and adult probationers, shall be allowed to report personally at the probation office at the same time.

Rule 9. Probationers Not to Leave Jurisdiction Without Permission.—No probationer, unless so authorized by the court or judge, shall be permitted to leave the city of Buffalo for more than two days without written permission from the chief probation officer, and the chief probation officer shall grant such permission for a period exceeding two days only when it seems consistent with the purposes of probation and important for the welfare of the probationer or for other valid reasons, provided that the chief probation officer shall not permit any probationer to remove permanently from the city without the special consent of the judge. The chief probation officer shall preserve a record of all probationers permitted to leave the jurisdiction of the court, and if they are to remain away for more than one month he shall employ such means as seem most practicable to maintain supervision over them while outside of such jurisdiction. So far as practicable, he shall request the co-operation of probation officers in the jurisidictions to which such probationers remove.

Rule 10. Violations of Probationary Conditions; Absconders.—All alleged or apparent violations of the probationary conditions by any probationer shall

be promptly investigated by the probation officer supervising the probationer. If the probation officer finds the violation to be serious, or if he has reason to believe that a probationer has absconded or otherwise disappeared, without permission, from probationary oversight or from the jurisdiction of the court, he shall forthwith report the facts to the chief probation officer.

Rule 11. Summons; Warrants; Arrests.—If it seems important to the chief probation officer to have a probationer, who has violated his probation, appear before the court or judge, and if the appearance of the probationer cannot be secured otherwise, the chief probation officer shall request the issuance of a summons or a warrant. If a probationer has absconded or otherwise disappeared from probationary oversight or from the jurisdiction of the court without permission, the chief probation officer. unless otherwise able to secure either the early return of such probationer or a satisfactory explanation of his action, shall request a warrant for his arrest.

The chief probation officer shall endeavor to have all such summons and warrants served as early as possible, and to assist in locating all probationers for whom such a process has been issued and whose whereabouts are unknown. He shall keep a record of all such summons and warrants, including the names of the police officer or other persons requested to serve them; and shall report in writing at least monthly to the judge concerning all probationers for whom a summons or warrant is outstanding. If the probationary period of any probationer for whom a summons or warrant has been issued, is about to expire before he has been brought before the court or judge, the chief probation officer shall inform the court or judge of the fact and may request that the probationary period be extended as provided in subdivision 4 of section 11-a of the Code of Criminal Procedure.

Rule 12. Discharge from Probation.—Each probation officer shall notify the chief probation officer two weeks before the probationary period of each probationer is to expire, and shall arrange with the chief probation officer to make a final report on the case to the judge, and to have the probationer brought before the judge for discharge or other disposition.

Rule 13. Adult Contributory Delinquency.—Whenever adults are placed under the oversight of a probation officer, as provided in subdivision 2 of section 494 of the Penal Law, the probation officer shall keep records of such cases and make reports thereof as provided for regular probation cases by Rule 14.

Rule 14. Court Records.—When a child or adult defendant is placed on probation, the judge shall sign a probation order which shall be filed with the court records of the case, and the judge or clerk shall enter on the docket the word—"Probation." In cases where the probationer is required, as one of the conditions of his probation, to pay a fine, restitution or reparation, the judge or clerk shall enter on the docket the words—"Probation—to pay a fine or (restitution or reparation to———), of $————." In cases where an adult charged with contributing to the delinquency of a child is placed on probation, as provided in section 494 of the Penal Law, without conviction, the corresponding entry on the docket shall be—"Probation upon consent." The clerk shall keep two "Probation Books," one for cases of children and the other for cases of adults, and in the proper book shall enter, in chronological

order, the names of, and other data concerning, all children or adult defendants, as the case may be, placed on probation. When any probationer finishes his probation, this fact together with the results of the probation shall also be entered in the proper "Probation Book."

Rule 15. Probation Records and Reports.—The chief probation officer shall establish and maintain the system of records and reports, and of indexing and filing the same, provided by the State Probation Commission. He shall keep a card index of all juvenile probationers and another of all adult probationers, together with records showing the probationers assigned to each probation officer, the dates on which all probationary periods expire, the probationers who are outside the jurisdiction of the court, those for whom summons or warrants have been issued, and other important facts. Each probation officer shall keep a written history of each of his probationers while on probation, and shall report at least monthly concerning each probation case, including violations of the probationary conditions, to the chief probation officer and to the judge who placed each such person on probation, such reports, so far as practicable, to be in writing and supplemented by oral explanations. Each probation officer shall also make such other reports as the chief probation officer shall direct. So far as practicable, all records and reports shall be typewritten.

Unless permission is granted by the judge or the chief probation officer, no index card or other records shall be removed from the probation office; provided, however, that any probation officer, upon notifying the chief probation officer in writing, may temporarily remove the records of any of his cases from the office whenever necessary in connection with the performance of his duties. The chief probation officer shall keep a list of all records removed from the office, and shall see that they are returned to their proper places. All records made or used by volunteer probation officers at their homes shall be delivered to the chief probation officer upon request or at the termination of each respective case. All records shall be guarded against indiscriminate inspection by persons not entitled to inspect them, and when not in use shall be kept locked. All reports of probation officers to the State Probation Commission shall be inspected by the chief probation officer before being sent to the Commission.

Rule 16. Payments; Receipts; Accounts; Cashier and Bookkeeper; Bonds —Any probation officer or other employee of the court, upon receiving a payment of restitution, reparation or an instalment fine from any probationer or any representative of any probationer, shall give the payee an official receipt for the payment. Whenever such a payment is received through the mail an official receipt shall be given or mailed to the probationer within twenty-four hours. All such payments if made to probation officers or other employes of the court shall be delivered to the chief probation officer as soon as possible. All such moneys when deposited in a bank shall be deposited in the name of the chief probation officer as trustee. Unless otherwise directed by the judge all disbursements in the form of restitution and reparation shall be made as early as possible within forty-eight hours, and shall be made by the chief probation officer and so far as practicable by check. All fines collected from probationers shall be delivered to the clerk of the court on the day of their collection, or, if this is impossible, within the next twenty-four hours. A receipt

for each disbursement, except those made by check, shall be kept in the probation office.

Whenever a probationer is permitted to make his payments directly to the beneficiary, he shall be required, unless otherwise directed by the chief probation officer, to receive receipts in duplicate from the beneficiary, and to deliver to the probation officer one such receipt for each such payment. The probation officer supervising such probationer shall endeavor to verify whether such payments have been made.

The chief probation officer shall keep a list of all probationers required to make payments, and shall keep accounts of all moneys received and disbursed, in the loose-leaf ledgers and cash books provided by the State Probation Commission. The chief probation officer shall make a monthly written report of all arrears to the judges requiring the probationers to make payments. The judge may require any probation officer who collects considerable amounts of money to give a bond.

The probation officers shall endeavor, so far as practicable, to have all payments by probationers paid from their own earnings. If any probation officer learns that the payments required of any probationer entail undue financial hardship upon him or those dependent upon him, the probation officer shall forthwith report the facts to the chief probation officer and the judge.

Rule 17. Publicity.—All probation officers shall avoid divulging any information concerning their investigations or probation work which will tend improperly to jeopardize the welfare of any child or adult defendant or probationer. No probation officer, except the chief probation officer, shall give any information or make any statements to newspaper representatives concerning defendants or probationers.

Rule 18. Miscellaneous.—No probation officer or representative of the probation office shall write to, or concerning, any probationer on a postal card. Whenever it is especially desirable to protect the reputation of any child or adult defendant or probationer, correspondence from the probation office shall be written on plain paper and be enclosed in an envelope which does not indicate that it is sent by a probation officer.

So far as is possible without interfering with their own work, the probation officers, when so directed by their chief probation officer, shall assist the probation officers of other jurisdictions in investigating and supervising cases for them.

Rule 19. Amendments.—Any of these rules may at any time be amended, repealed or temporarily suspended by the judge. A. W. T.

**Prison Labor Legislation.** "The legislatures for the year 1912, will soon adjourn, but it is still too early to completely review their work. A number of bills have passed, however, in the several states which are of great significance to prison reform.

"In Kentucky, the former board of prison commissioners has been legislated out of existence after a most bitter fight. For years the prison board by the control of the prison patronage is stated to have swayed the legislature. The platforms of both parties at the last election promised reform by the substitution of a new and bi-partisan board. Governor McCreary sent several

ringing appeals to the legislature, and as a result the old board was done away with, but the new board is still to be partisan in its makeup. At least, it is to be appointed by the governor without restriction, despite the desire of the governor to avoid this responsibility. The new board promises to be a new broom, and there is expectation on all sides that new conditions will prevail.

"Virginia has passed a bill providing for the extension of the convict labor system on roads, so as to include 600 convicts who are at present employed on a shoe contract at the state penitentiary. The convict road force, which has for some years been under the management of the secretary of the state board of charities, has now been developed into a state-wide organization. All able-bodied convicts will be placed on the roads, while the sick, aged, and women will be divided between the farm and penitentiary. As the legislatures have refused to pass the bill prohibiting the contracting of the convicts who remain at the prison, it leaves in the hands of the prison board the question of their employment. The value of this remnant to prison contractors will, it is said, not be sufficient to ensure the high price which the board will have to get for their labor and will make possible the introduction of the state use system for the people at the institution.

"Other legislatures have prison bills before them. In Maryland there is one bill calling for a commission to investigate the prisons, and another to establish the state use system. A bill to investigate has also been introduced in Rhode Island. There seems good likelihood that the investigating bills will pass."—From *The Review,* Vol. 2, No. 4, p. 14. R. H. G.

**"A Temporary Check in Chicago."** *"The Survey* (New York) of March 30th brings sad news which we cannot but notice. Something has happened in Chicago, something which is announced on the cover of *The Survey* as "The Undermining of the Chicago Juvenile Court." Mr. Witter, the chief Probation Officer of that court, to whom we have been accustomed to look as a leader and as an example in juvenile court probation work, has been dismissed from his post.

"We understand that party politics are here involved, and it is not our business to intervene in the party politics of other lands. But we may perhaps be permitted to lament the dismissal of a noted and highly trusted officer of one of the best juvenile courts of the world. And it is only a friendly duty to remind all citizens of Chicago that, in the matter of child rescue and enlightened co-operation for child welfare, theirs is a city set on a hill, to which lovers of progress round the globe look for example and the fruits of experience, and that what is done for the children of Cook County, Illinois, concerns us all, for it is done, either for good or for ill, for the children of the whole world.

"One thing that the recent crisis has produced is what is evidently a very valuable report by the "Hotchkiss Committee" on Juvenile Court Law and Jurisdiction. We feel convinced that this trouble will result in the better paving of the road of progress in child rescue."—From *The Penal Reform Monthly Record,* London, May, 1912. R. H. G.

**Dr. Kriegsmann on the Brostal System.**—By Dr. Jas. N. Hermann Kriegsmann in the *Bulletin de l'Union Internationale de Droite Penal.*, Vol. 18, Liv. 2, 1911, not only gives a thorough analysis of the English "Brostal System," on the basis of official documents, but subjects that system to a careful criticism from the standpoint of German jurisprudence and prison science. The discussion is valuable for Americans because the Brostal ideas are essentially those which underlie our "reformatorites," parole and juvenile courts. On the whole this German writer finds the system worthy of approval and not inconsistent with the fundamental principles of criminal law. He thinks that all delinquent children under 16 years of age should be treated as subjects of educative processes (Fürsorgeerziehung); that after the 16th year is reached a careful distinction should be made between three categories; those who are only superficially criminal and require nothing more than a sharp and short lesson; those who are practically incorrigible and vicious and should be placed under severe penalties; and the educable and reformable who are proper subjects for reformatory institutions.

With many other German writers he emphasizes the distinction between "general prevention" (deterrence) and "special prevention" (reformatory education). An American of the reformatory school would admit the necessity of specializing institutions and measures, and of avoiding associations which corrupt by classification and separation, but would certainly insist that in every institution the educational spirit and aim should, even in the severest punishment, never be forgotten.

The article shows a fair and intelligent mind, capable of appreciating and assimilating the lessons of experience, no matter who has taught them.

C. R. H.

**Movement for Industrial Farm in California.**—Captain William I. Day, of the California Prison Commission, is urging the establishment of an industrial farm for discharged men in California. He recently made the principal address at the meeting of the Grace Church Brotherhood in California on the subject, "The Solution of the Problem of the Prisoner." He hopes for the introduction of a reform bill in the next Legislature providing for an industrial farm. This would help both discharged and paroled men to get a new beginning in life with a chance to earn a decent living. Incidentally he thinks that through such means hitherto waste land might be utilized and the state might provide for the quarrying of stone, the manufacture of cement and brick and other building material for which the state at present pays high prices.

Captain Day thinks that a section of land, either forest, quarry or farm land, could be set aside, cleared and rendered useful. Here discharged men could find immediate employment, instead of being sent out, as now, with nothing but the clothes they stand in and $5 in money between them and starvation.

"Strong, able-bodied men, bearing the stigma of ex-convicts," says Day, "find it hard to secure employment, where thousands of men without a prison record are unsuccessfully searching for work. There is little wonder that

men will sometimes commit other crimes, especially those who are not physically able to do manual labor.

"The industrial farm would offer to any man leaving prison, whether paroled or discharged, an opportunity to earn a living and provide a home until a suitable position is secured for him. Such a farm would be of great benefit to aged men, cripples and invalids who have not the support of friends, nor employment suitable to their strength and health provided for them on their discharge."

Captain Day says that worthy convicts can be transferred from the penitentiaries to this farm, where they may have more privileges and less restrictions than they had in prison, and here, under the supervision of the farm superintendent, they can be watched closely. These transfers may be governed by joint decision on the part of the warden and his leading assistants and the State Board of Prison Directors.

The discipline, combined with the opportunity, says Captain Day, will make good citizens. Misconduct on a man's part will mean a return to prison, while good conduct for a sufficient period will earn for him parole privileges. An allowance for faithful service will enable him to earn on the farm sufficient cash to supply his parole expenses and clothing, should he not possess the amount or secure it from his friends. Men thus securing parole privileges would be the ones most likely to be faithful, having been tested and their character proven. R. H. G.

**Punishment for Intention or Results.**—An article in No. 2, *Schweizerische Zeitschrift für Strafrecht,* 24th year, by Dr. Frantz Exner, of Vienna, on punishment for intention or results, involves the whole question of negligence. Punishment for intent only would free the criminal by negligence. Punishment on the basis of results alone does not reach the real basis of guilt. The negligent man in a position of great responsibility is more dangerous to society than the person who deliberately takes a single life. The professor's difficulty, and that of most writers dealing with this subject, arises from the time-worn attempt to make the punishment fit the crime instead of the criminal. PHILIP A. PARSONS, Syracuse University.

**Abolition of Capital Punishment.**—The Society for the Abolition of Capital Punishment, with headquarters at Margaret Chambers, 145 New Kent Road, S. E. London, has recently issued a leaflet setting forth its objects and appealing for members. The aims of the society, as stated in this leaflet, are to obtain:

1. A more rational treatment of crimes of murder by the immediate adoption of a gradation of such crimes as proposed by the Royal Commission of 1864.
2. The consequent exclusion of various forms of homicide from the category to which the Death Penalty is applied.
3. The ultimate complete abolition of capital punishment.
4. The acceptance of the principle of the curative treatment of homicidal prisoners.

The president of the society is Dr. Josiah Oldfield, M. A., D. C. L., and the honorary secretary is J. F. Tilly. A. W. T.

**Capital Punishment as a Deterrent to Crime.**—The opinion of certain English judges regarding the effect of capital punishment may be noted from the following clipping from *Law Notes* for January:

"The best method of dealing with criminals convicted of murder was discussed at a recent conference held under the auspices of the Society for the Abolition of Capital Punishment. Letters were read from Mr. Justice Grantham and Mr. Justice Channell, each maintaining that capital punishment was a great deterrent to criminals. Mr. Justice Grantham wrote that he was convinced that if capital punishment were abolished in the country life would be less secure than it was now. Fear of it prevented a great number of bad criminals from committing murder to avoid detection, and he thought it the duty of society to protect the lives of innocent people rather than save the lives of murderers. Mr. Justice Channell expressed the opinion that the criminal classes in England had a great horror of death at the hands of justice, and that the fear of it was a very great deterrent. Some criminals, he added, were not generally capable of being influenced by any consideration of the consequences of their crime, and in such cases capital punishment was ineffectual as a deterrent, and might, therefore, be somewhat difficult to justify." EDWIN R. KEEDY, Chicago.

**Special Institutions for Intemperate Criminals.**—Dr. Legrain, Head Physician of the Asylum of Villa Evrard, is quoted as follows in *The Reflector:*

"For insane criminals, special institutions are gradually being organized. For habitual drunkards, similar institutions are needed. The question is asked whether those that have been in existence for the last ten years have been a success. Unfortunately, there are few documents from which to gather replies. The Inebriate Act of England, 1898, provided for two classes of intemperates: (1) those convicted of crime, directly or indirectly the result of drink; (2) the intemperate guilty of a certain number of misdemeanors attributable to intemperance. Three kinds of institutions are at the disposition of the law; two state asylums; certified reformatories, or private institutions ordinarily founded by religious orders which receive drunkards through the courts or by transference from the state asylums; three retreats, which receive those who desire treatment and those who have been guilty of misdemeanors and who sign a paper before the justice of the peace that they desire to be treated. Little is said in the reports of the results, but it is fair to conclude that the English law, which has made happy progress compared with most legislation, has farther to go before it will be perfect. After characterizing the laws of several Swiss cantons, and of the United States, Dr. Legrain concludes as follows: 1. From the short and limited experience of institutions for the prolonged detention of intemperate persons, it is that this method of treatment is useful and profitable. Permanent reform has followed in many cases. For the success of the cure there should be oversight to see that the subjects keep up the practice of abstinence, which is the essential agent in the treatment. 2. The treatment should be given as early as possible and the expense reduced to the lowest limit. It would seem that the best way is to leave this work to private initiative, aided by the govern-

ment, leaving to the government the incorrigible cases. 3. From examination of the practice of different countries as to the point at issue, to-wit, the intervention of the law in cases of evil doing through the influence of cerebral poisons, it would seem that the best results, and the least costly, are the laws which permit the prolonged detention, in spite of themselves, of habitual drinkers. 4. The method of Judge Pollard, of St. Louis, is to be highly approved. It has excited interest in Sweden and England, and has been adopted in some courts of Great Britain. This method consists in offering to delinquents who are intemperate, whom alcohol alone has led to commit their offenses, conditional liberation on condition of their taking the pledge of total abstinence. That may make some smile, but it is a serious matter when urged by a judge like Judge Pollard and some others. Thanks to their efforts, 95 per cent of such delinquents have been brought into the right way. We commend, also, the excellent prophylactic method in vogue in Germany, which intrusts to the municipalities themselves the oversight of institutions for keeping people from the use of alcohol, and looks after them when they have become addicted to its use, through the police, through asylums, abstinence societies, etc." R. H. G.

**Suspended Sentence.**—Robert Jacobson, Advocate of the Supreme Court, Christiania, is quoted in the *Reflector* as follow:

"Suspended sentence was introduced into Norway in 1894. It applies for cases of fines or short sentences, sentences that would mean six months in the house of detention or three months of imprisonment. The court takes into consideration the nature and gravity of the crime, the circumstances under which it was committed, the age of the offender, his previous record, etc. If it is some time since the crime was committed it is ascertained whether the accused has made reparation, so far as possible, or showed penitence.

"If the person whose sentence was suspended commits crime within three years and is convicted and sentenced, the execution of the suspended sentence also goes into effect. If it was an intentional crime, or if the accused has some other sentence than imprisonment, the court will decide whether the first sentence may still be suspended.

"When sentence is suspended the judge will at the same time admonish the accused, and if he is under twenty-one will exhort him as he has opportunity. Conditional sentences are subject to appeal.

"One of the objects in adopting this method was to avoid the harm that comes from imprisonment for short periods, which are demoralizing. By a conditional sentence the criminal is spared the sojourn in prison, and if for three years he abstains from committing crime it becomes a powerful stimulant to keep in the right path. That is the side which is of the greatest interest.

"Norway has statistics to show the results of this method since it went into operation. From the tables we find that the half of those convicted between the ages of fourteen and eighteen (fourteen being the age of criminal responsibility) were conditionally sentenced. Of those above eighteen, 11.8 per cent were conditionally sentenced in 1907. The sentence was applied more frequently to women than to men.

"As to the effect of conditional sentences data can be given only of those pronounced from 1903 to 1905. During those years 1,152 persons were so

sentenced. Out of that number four died, one was pardoned, twenty failed to make promised reparation and 201 were again under arrest and reconvicted. But a little over 80 per cent came out successfully during those three years. Some have fallen since then, but it is safe to say that among all who have been under the suspended sentence not more than 10 per cent have become recidivists. Though these statistics cover only a few years, and it is but five years since the law has been in force, they would seem to show that conditional condemnation is an efficacious method of preventing crime." R. H. G.

**Dr. Mittermaier on the Indeterminate Sentence.**—The following is reprinted from *The Reflector* of Grove, N. D., December 9, 1911, where it appeared under the authorship of M. W. Mittermaier, professor in the University of Giessen, Germany: "All that can be needed today is to examine anew the indeterminate sentence to see if it can be made to harmonize with the fundamental principles of penal law; to show the experience already derived from the exercise of that sentence, and to learn the view of those who have made a profound study of this question. The commission having expressed itself in the first question, it only remains for me to give my opinion as an observer and critic. I could do it briefly by saying that I agree completely with the conclusions of Dr. Freudenthal in his work on the reform of German penal law, but it may be better to give my individual opinion. The practical execution of a sentence differs according to the way it is understood. He who sees in a sentence only reparation for the crime will trouble himself less with reformation of the convict and the protection of society, which must be considered in carrying out an indeterminate sentence. And if it is granted that that sentence may be applied to certain categories of delinquents and not to others, it must be asked if the end of punishment permits such a distinction. Now I say that the penalty should not be for reparation alone, but that the amendment of the criminal and the safety of society are to be considered, though reparation must be considered, of course. In juvenile crime the preference is always given to the idea of reformation rather than to that of reparation, and in all civilized countries the principles of reformation and of protection play as large a part as the principle of reparation. The amount of reparation must be measured by the act and the guilt of the offender. Today that measure is fixed by the judge before the execution of the penalty; but I say, as do many other penologists, that it is just as well to wait to fix that measure till the execution of the sentence. During the trial the judge cannot measure the guilt of the offender as accurately as it can be measured during the carrying out of the sentence. The personality of the criminal and the character of his crime are certainly better revealed in the course of months and years of observation than during a trial which lasts a few minutes or a few hours. I may add also that with an indeterminate sentence the conduct of the convict is not always an index for liberation. A man should not be set at liberty because his conduct in imprisonment is without reproach, but because he has given proof that he is not wholly bad. Those who are not familiar with the penal system know that a capable and vigilant prison officer very quickly reads the real character of a prisoner. And there are several officers who are observing the prisoner at the same time: the superintendent, the physician,

the chaplain, the instructor, and others who know the daily life of the prisoner and are able to judge it with exactness. These institutions also offer to the prisoner the chance to show his real character. Consequently, if one wishes to learn the measure of reparation necessary to meet the crime, one certainly is not subject to so many errors by doing it in prison during the execution of the sentence as in the courtroom. It must be remembered, too, that the officers of prisons know their duties, and though they are not clothed with the powers of the judge, yet we may have confidence in them. Conditional liberation has already exercised a large influence in prison affairs. I believe that progress will lead us some day to employ the penalty itself, as much as possible, for the reformation of the prisoner and for public security, and that when it alone does not secure these ends other means will be found to secure them. Even now we are organizing our penitentiaries on that principle. We try reformation, and if that fails, then measures must be taken to deal with habitual, dangerous and incorrigible criminals that will conduce to the safety of society, as, for instance, longer sentences. Everyone knows that as a measure of prudence a dangerous criminal must be held a longer time than an ordinary prisoner. The indeterminate sentence allows that, and at the same time the very fact that he is under an indeterminate sentence may incite the prisoner to reform. Though in theory the indeterminate sentence might be applied to all offenses, yet in practice there must be restrictions. So long as we consider short-term sentences necessary we shall not give to them the character of an indeterminate sentence. There are thousands of cases in which by inflicting a penalty we wish to show not only the offender, but all the people, that the state will not tolerate such acts. In such cases we do not pay so much regard to the individuality of the offender as to the nature of the crime. The indeterminate sentence takes account of the personality of the criminal. When it is a question of studying the crime with the greatest care, of trying to reform the criminal, of securing public safety, and of having a sentence that shall show the gravity of the case, then the indeterminate sentence is indicated. That rule applies to adolescents up to the age of 25, or to recidivists in serious cases, but not in those of less importance. It is already practically realized in those cases, or looked forward to, in the United States, England, Australia, Norway, Sweden, Switzerland and Austria. Even where reform methods take the place of penalties, the character of the indeterminate period of detention prevails. For practical reasons an indeterminate sentence must be considered indispensable for the two classes mentioned, while for others it may be desirable, though not necessary. They are the cases where we have rather reparation in mind than the reform of the criminal, and where we are looking for public safety. Personally I am convinced that as a rule, with a counterfeiter, a fraudulent bankrupt, a murderer who acts under passion, a political criminal, the possibility of moral reformation is an illusion, and that even a prolonged confinement would not bring it about. In those cases we may dispense with the indeterminate sentence. The opportunity to secure conditional liberation would be sufficient for such cases. It may be objected that it is not rational to apply the indeterminate sentence to one category of offenses and not to others. That objection is not justified. How many courts now pronounce different penalties for different crimes? It

is not fair to say that the establishment of the indeterminate sentence would interfere with the necessary balance of penalties. Anyone who says that shows that he is ignorant of the modern principle of the individualization of penalty. One would not give the same penalty to a beggar, a counterfeiter, a political offender, but the principle of the indeterminate sentence would be the same for all. The objectors fear that the rights of the prisoner will not be sufficiently guarded. I cannot share their fears. For determinate sentences that guaranty resides in the attitude of the judge. But here the influence of the penitentiary administration is considerable, and, in fact, it is from that that emanates the true significance of the sentence. Yet no one fears that the personal liberty of the prisoner is not sufficiently safeguarded by the penitentiary administration. I should have perfect confidence in the penal authorities to carry out the law, but it might be possible to strengthen the guaranty. At first there might be a minimum and a maximum. The officials would then be limited. Then there is a guaranty in the fact that the physician, the chaplain and others are associated with the superintendent, and with good officers there would be little danger to the liberty of the prisoner. Promotion from grade to grade employment at various industries, all these help to influence the prisoner. It would be imprudent to leave the fate of the prisoner to one officer alone. The best guaranty of the just treatment of the prisoner is the combined decisions of several officers who are working toward a common end. Such officials can tell whether a prisoner is a hypocrite or not. The idea of theorists who imagine that every prison director is deceived is as absurd as the ideas of the people who pretend to be sick. Finally the authority established to decide on liberation furnishes a new and important guaranty. Details are unimportant, but the principle is practical, as may be seen from the results in the United States. Thus, I see no real obstacle to the introduction of the indeterminate sentence. Some other suggestions as to sentences have been made. Let them be tried. They are only advance couriers of the indeterminate sentence. A definite sentence, followed by 'preventive imprisonment,' would be practically of the same effect as the indeterminate sentence. In both cases the individuality of the prisoner would have to be taken into account. Therefore, I conclude that the indeterminate sentence is the best form of prolonged imprisonment for delinquent adolescents up to the age of 25, who are susceptible of reformation, and for incorrigibles and recidivists of every kind. It is not opposed to the principles of penal law, and it is in harmony with the protection of personal liberty. For dangerous criminals there can be preventive imprisonment succeeding a definite sentence." R. H. G.

## STATISTICS.

**Italian Crime According to the Most Recent Penal and Prison Statistics.**—Professor Filippo Virgilii, Professor of Statistics at the Royal University of Siena, contributes to the October and the November issues of the *Scuola Positiva*, an illuminating article on "Italian Crime, According to the Most Recent Penal and Prison Statistics." The figures were compiled by the Department of Statistics of the Government of Italy under the direction of several enthusiastic statisticians and sociologists, among whom was the genius Doria. Blanks were issued to magistrates, to judges of the higher courts,

and to penal and reformatory institutions. It might go without saying that the figures got in this way are not exact. Public officials, the author of the article says, do not take investigations of this sort seriously. The statistics compiled now are, however, tolerably satisfactory. We may get from them many interesting and instructive facts, and derive from them most valuable suggestions and conclusions.

Angelo Messedaglia said, in 1865, "that criminal statistics furnish the strongest, if not the only certain symptoms of the civil morality of a nation. We may know things only by contrast. We may discern order only by seeing disorder. The beating of the heart is not noticed except when it is abnormal. Death is the measure of life. So morality is delimited and measured only by immorality; respect for law defined and measured only by infractions of law. In criminal statistics we have both the qualitative and the quantitative elements, and thus we have the true material of statistics, satisfying the demands of science." And did not Lord Brougham say to the statistical Congress held in London in 1860, that "criminal statistics are to the legislator what the chart, the compass and the plummet are to the navigator?"

Professor Virgilii divides his analysis of the voluminous statistics and his discussion of them into the following heads: (1) Objective Statistics, (2) Subjective Statistics, (3) The Geography of Crime, (4) Statistics of Prisons, and (5) Statistics of Reformatories.

*Objective Criminality.*—Under the first head he gives a table showing crimes committed each year from 1879 to 1899, inclusive. From this table we gather that there has been a gradual diminution of the number of crimes, the decrease in every 100,000 of inhabitants being from 960 to 892. From the second table taking in crimes committed in the years 1890 to 1905, inclusive, we learn that crime gradually increases from 1890 to 1898, the year of very grave political disorder in Italy, from the proportion of 100 to 137. In the period 1898 to 1901 there is a regular decrease from year to year. Then there is again a rise in 1902, which continues in 1903, when the number of crimes reaches that of 1898, "the fatal year." The number, however, drops down to 132 in 1904, and stops at 133 in 1905. The number of felonies during these years, 1890 to 1905, is greater than the number of misdemeanors, but the rate of rise is greater in the case of misdemeanors than in that of felonies. In 1890 the number of felonies was 391,623, in 1898 it was 527,383, in 1905 it was 500,687. In the same years the numbers were respectively for misdemeanors, 218,250, 312,123 and 310,810. The rate of increase was in the case of felonies from 100 in 1890 to 134 in 1898, and 127 in 1905. And in the case of misdemeanors it was 100 in 1890, 143 in 1898, and 142 in 1905.

The following table is so valuable that I give it just as the author has presented it:

| | Number of Crimes Reported (per 100,000). | | |
|---|---|---|---|
| | 1890. | 1898. | 1905. |
| Violences, resistances to authority and acts preventing authorities from doing their duty..... | 37.95 | 54.37 | 47.28 |
| Crimes against public justice and public officers..... | 45.53 | 38.50 | 40.12 |
| Crimes against good morals..... | 16.50 | 23.66 | 23.19 |

| | | | |
|---|---|---|---|
| Murder and manslaughter | 12.04 | 11.78 | 8.51 |
| Personal injuries (voluntary, i. e., with criminal intent) | 244.50 | 278.45 | 273.24 |
| Libel and slander | 201.91 | 268.15 | 221.69 |
| Robbery, extortion and threats | 7.93 | 12.06 | 12.34 |
| Thefts | 361.85 | 433.53 | 402.30 |
| Frauds and cheats | 53.55 | 75.49 | 65.86 |
| Other felonies provided for in the Penal Code | 301.05 | 429.96 | 372.89 |
| Misdemeanors | 740.50 | 1012.17 | 956.65 |

As the table shows, the gravest of crimes, murder, has shrunk from 12.04 to 11 during 1890 to 1898, and from 11.78 to 8.51 during 1898 to 1905, shrunk to a third of its former self. "This," says Professor Virgilii, "is the only comfort this prospect can give us. It ought to follow that personal violences, assaults and batteries, since they are complementary crimes to murder, decreased too, but they grow from 244 in 1890 to 278 in 1898, and drop only to 273 in 1905. Crimes against property have all enhanced. So it is also with crimes against good morals and manners and the order of the home. These crimes cannot but trouble us seriously."

*Subjective Criminology.*—Under this head are discussed the personal qualities of the criminals—sex, age and condition of life. There were in the period running from 1891 to 1895 among every 100,000 inhabitants 1,109 males and 229 females; a proportion of 82.8 for males and 17.2 for females; in 1896 to 1900 there were 1,165.9 males and 247.6 females; a proportion of 82.1 for males to 17.9 for females; in 1900 to 1907, 897.4 males and 206.9 females; a proportion of 80.9 for males to 19.1 for females. Crimes committed by males are quadruple those committed by females. But from 1891 to 1907 we may see a light decrease in crimes of males and a corresponding increase in crimes perpetrated by females.

The most crimes are committed by persons between the ages of 21 and 30—28 per cent of all crimes. A high percentage is kept up between the ages of 30 and 40. After this latter period the percentage becomes smaller and smaller. There is a terribly high proportion of crime between the ages of 18 and 21. Juvenile crime—that is, crime committed by persons below the age of 21—is not only very high, but grows constantly. There were in every 100 criminals during 1891-1895, 23 per cent of juveniles, during 1896-1900, 23.6 per cent, and during 1906-1907 the flood rose to 26.4 per cent. Professor Virgilii urges the necessity of immediate thought and action in regard to the treatment of the young. He holds up to emulation the admirable example of the United States and of England in which a concrete program of prison reform, and educational improvement in reformatories is being intelligently and perseveringly developed and put into effective operation. In regard to the nature of crimes committed by juveniles, it may be said that children under fourteen perpetrate, for the most part, crimes against property, that children from 14 to 18 years of age indulge in frauds and begin to exhibit the sad tendency to crimes of passion. This tendency becomes accented from the ages of 18 to 21. From 21 to 25 the crimes committed are assaults and batteries, frauds, disobedience and violence to the authorities; from 25 to 30 besides the previously mentioned crimes, forgery. From 30 to 40 in addition to the crimes already named, crimes against public administration become manifest. From 40 to 60 the same crimes hold

sway. From 60 on, private violences, personal injuries, frauds and crimes against public administration.

In respect to the civil condition of criminals, it may be said in general that celibates contribute most to the stream of crime. In 1891-1895 the proportion was 50.4 for celibates, 43.8 for married people, and 3.8 for widows and widowers. In 1896-1900 it was 50.7, 43.7 and 3.9 respectively. In 1906-1907 it rose to 53.9 for the first, sank to 41.4 for the second and lightened one-tenth for the third.

In respect to the occupations of criminals, it may be noted that over one-half of the crimes are committed by agriculturists. And the number remains constant during the three periods above mentioned. One-fifth are committed by persons in the industries, in the arts and in the trades. Commerce, which, in the decade 1891-1900, furnished one-eighth of all the criminals, now does not furnish more than a tenth. House servants contributed during 1891-1900 1½ per cent to the number of crimes, but now they contribute 3½ per cent. Professional men, capitalists, and persons employed otherwise than as already mentioned, have maintained a steady percentage of a little over three.

It is interesting to know that every group of delinquents has a specific crime or crimes characteristic of it. So, we find that the agricultural classes are addicted to frauds and light personal assaults; the industrial classes given over to the same crimes, but the number of them is in inverse order to the former; the commercial classes are addicted to bankruptcy, frauds, bribery and other crimes against public officials; household servants to fraud and violence; other employes and capitalists to crimes against public administration.

*The Geography of Crime.*—One of the most valuable parts of the article under summary is that part which deals with the distribution of crime. For the second time I must ask leave to present a table from Professor Virgilii. There are so many vague notions floating about concerning crime in different localities of Italy that it is a duty one owes to truth to give the following table, word for word, and number for number. The reader will find in this table the per capita wealth of the population, and he may, or may not, discover some connection between material condition and crime.

| | Provinces. | Per Capita Wealth (1903) in Lires. | Convicted Every 100,000 Inhabitants (the average for 1903-1905). For Felonies. | For Misdemeanors. |
|---|---|---|---|---|
| Northern Italy..... | Piedmont | 3,179 | 27.6 | 30.4 |
| | Liguria | 3,716 | 42.2 | 88.5 |
| | Lombardy | 2,520 | 32.4 | 38.0 |
| | Venetia | 1,593 | 33.7 | 40.9 |
| | Average | 2,749 | 36 | 49.4 |
| Central Italy..... | Emilia and Romagna | 1,765 | 31.3 | 51.2 |
| | Umbria and The Marches | 1,244 | 46.6 | 32.8 |
| | Tuscany | 1,817 | 33.2 | 88.6 |
| | Lazio (Rome) | 3,174 | 105.8 | 458.1 |
| | Average | 2,000 | 54.2 | 157.7 |

| | | | | |
|---|---|---|---|---|
| Southern Italy..... | Campania, Abruzzi and Molise.. | 1,583 | 104.1 | 67.8 |
| | Basilicata ..... | 1,406 | 107.3 | 30.3 |
| | Apulia ..... | 1,712 | 98.6 | 31.6 |
| | Calabria ..... | 1,186 | 98.4 | 32.6 |
| | Average ..... | 1,498 | 102.1 | 40.6 |
| | Sicily ..... | 1,604 | 73.3 | 33.4 |
| | Sardinia ..... | 856 | 103.6 | 62.8 |

Comparing the first two columns, we see that as the per capita wealth decreases, the number of crimes increases; and that the increase in the number of crimes is in proportion greater than the decrease in wealth. This comes from comparing the averages of the different grand divisions of Italy. But a more detailed study of the figures for each Province, and a comparison of Province with Province show discrepancies which are worthy of our attention. Piedmont and Lazio have the same wealth, but the crimes of the latter are four times as many as of the former. Emilia and Apulia have nearly the same wealth, but the crimes of the latter are more than three times as many as they are of the former. Liguria is much richer than Venetia, but instead of having less crime it has more. Misdemeanors are more numerous in Lazio and relatively scarce in Southern and Northern Italy.

Do the figures militate against the economic interpretation of crime, let alone the economic interpretation of history?

"There is no doubt," says the author, "that poverty eats up the organism, deteriorates the mind, and produces evil consequences which permeate social life. Of this scientific proof has been adduced by Pagliani, by Claude Bernard, by Richet and by Albertoni. Our school, the criminal anthropological, has been unjustly accused of ignoring economic conditions, and of having the preconceived idea of the born criminal. But the accusation is unjust. Enrico Ferri, before he limned the new prospects of the young school, took a dive into statistics, studied French crime from 1826 to 1876, and related it to the economic environment. Soon afterwards he established the law of the maximum level of crime, which maximum varies with the environment both physical and social. Vergilio Rossi and Fornasari di Verce followed in the same strain. Indeed, the last comes to the conclusion that poverty always acts as the principal cause in crime." This latter seems to Professor Virgilii an extreme view. He believes the statistics he is examining do not bear it out. "Moral phenomena are not explicable by reference to one cause. They are produced by a variety of concomitantly acting causes. Some of these causes are the state and degree of education, and of culture, the climate, the seasons, the religious sentiment, alcoholism, etc."

At this point the author quotes from Francesco Coletti, General Secretary of the Parliamentary Commission for the Study of the Condition of the Peasants in Southern Italy and in Sicily, to the following effect: "In respect to the intensity of crime Italy may be divided into three zones: The first, beginning at Piedmont and extending down to Emilia, is the least black; the second, running from Tuscany to Lazio, is of medium darkness, the third, from Abruzzi to Calabria and the Great Isles, is the blackest." . . . "Each region, each Province, as is true also of each social class which is distinct in character, has, in general, its own peculiar crimes. In Abruzzi the peculiar crime is theft; in Calabria the endemic crimes are violences against the person,

carnal offenses, robbery; in Sicily extortion and kidnapping; in Sardinia larceny and robbery of animals, unlawful pasture, and robbery from the person. Aquila is noted for its thefts; Girgenti and Trapani for homicides, Catania for its adulteries. There are regions, moreover, in which all the principal and most characteristic social classes give relatively a high quota of criminals; there are others in which the difference of the contribution of the several classes is very marked. Sardinia is among the former regions; Liguria, and some other Provinces, especially in the north of Italy, among the latter. Juvenile crime, in respect to population, is greater in Southern Italy, in the Islands, and also in Central Italy than it is in Northern Italy. Recidivists are more numerous in the South of Italy and in the Islands than they are in the two more northern zones. The highest quota is given by Abruzzi, Molise, Sardinia, Lazio and Calabria." R. F.

**Prison and Reformatory Statistics in Italy.**—The following is from Professor Virgilii's article in *Scuola Positiva* for November-December, 1911: "The prison and reformatory statistics for 1908 and 1909 are in four volumes, which are of uncommon accuracy in our official publications. For them Alessandro Doria is responsible. They are complementary to and control the figures and facts derived from our study of the judicial statistics. It is a duty to recognize the fact that the activity and the intelligence of one man, Signor Doria, has supplied the economic deficiencies and met the bureaucratic obstacles which have presented themselves. He has achieved miraculous results. To him are due the abolition of the chain and ball, the lightening of disciplinary punishments, the use of the labor of prisoners in work beneficial to their improvement, the separation of the administration of reformatories from prisons, the reduction of the number of penitentiaries, the gradual improvement of buildings; the institution of a sanatorium for the criminal tubercular; the opening of a school for the education of the keepers in the proper methods of treatment of prisoners; the preparation of prison rules and regulations to substitute those now in existence, which are antiquated and not in harmony with the exigencies of progress."

To houses of detention, which exist in the more important cities, there were brought daily an average of 305 in 1908. But 1909 shows a decrease with a daily average of 271. Doria comments: "Not only does the number of convicted persons drop, but also the number of those charged with crime. The former fact might mean a partial decrease of crime, but the latter fact, even though not all guilty persons are arrested, ought to point to a marked diminution of the number of crimes."

Reformatories have now been effectually separated since 1904. The treatment and the education of the young criminal must be different from the treatment and the education of the hardened criminal. In these first few experimental years the following benefits have been conferred: the immediate and complete adaptation of the youngsters to the new personnel; the organization of the procedure according to the new regulations; the notable diminution of friction between inmate and inmate, and between inmate and keeper; the progressive development of the education of the reformatory occupants; the awakening of the sense of emulation on the part of private institutions in the

exercise of correctional functions. The number of government reformatories is, however, notably smaller than that of private reformatories. There were in the whole of Italy 11 of the former, and of the latter 35. The population of all these institutions was distributed as follows: In government reformatories there were 1,600 males and 106 females, and in private reformatories 1,984 males and 1,976 females, the grand total being 5,666.

The regions of Italy that furnish the greatest number of juvenile delinquents are Sicily, Campania, Lombardy, Lazio (Rome), Venetia, Piedmont. The regions that furnish the smallest number are Sardinia, Umbria and Basilicata. In every 100 males in reformatories 80 come from cities and 20 from rural districts; in every 100 females, the proportion is 78 to 22. In respect to civil condition, there are in every 100 males 89 illegitimate children, seven legitimate ones and four foundlings. In respect to special conditions of the family there are in every 100 males 44 whose parents are both living, 27 whose fathers are dead, 19 whose mothers are dead, and 10 who are orphans; and in every 100 females, 45 whose parents are both living, 24 whose fathers are dead, 22 whose mothers are dead, and nine who are orphans. Looking at the economic condition of the family, we derive these figures: In every 100 delinquents there were 90 whose parents had a trade or business, 5 whose parents were unknown or had disappeared, 4 whose parents were beggars or vagabonds, and only one who was the son of an owner of land. Looking at the health of the delinquents, we get these facts: Among males 84 were in good health, 13 were in mediocre health and 3 were in bad health; among females 64 were in good health, 28 in mediocre health and eight in bad health. These figures seem to indicate that the healthier the child the more probable the commission by it of acts criminal or against discipline. From the point of view of education, it may be said that 41 males in every hundred had no education, 40 but little, and 19 sufficient education; and that in every 100 females 44 were without education, 47 were with little of it and nine had enough.

"These conclusions seem interesting in that they point to the causes of this grievous sore of our social life—juvenile crime. When we have discovered the root of the evil the cure will be easier." R. F.