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Editorial

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EDITORIALS.

DO WE NEED THE LEGAL MUCKRAKER?

Do we need the legal muckraker any longer? I think not.

At any rate, I am sure not, if he is to use misrepresentation in his appeals to excite public sentiment. Under the term "misrepresentation" I include a fact knowingly so stated as to produce a false impression of it for the purpose in hand.

In recent articles in popular magazines, Messrs. Snyder and Connolly have published strong censures of our system of justice, in particular of our judicial methods. In the latest articles the honesty of our judicial personnel comes to be attacked. The spirit and method of these articles does not commend itself. In some of them, passages of my writing have been quoted in support. I stand by what I have ever said; but I disclaim sympathy with the spirit and method of those articles, and I venture to hope that my writings may not again be used by those authors for that purpose.

The article I desire here to criticize is entitled "Big Business and the Bench," second article, by C. P. Connolly, and appeared in *Everybody's Magazine* for March, 1912, page 291. In thus citing the volume and page of what I criticize, I do more than that writer does; for although he specifically censures a dozen Supreme Court decisions in various states, he does not in a single instance give the citation by which the correctness of his censure can be verified. Only by an occasional proper name or date can his cases be discovered in their original reports.

To discover the basis for his censure, I have thus traced the first two of them. What I found justified me in stopping at that point, and in now stating that misrepresentation, in the inclusive sense above used, is a part of the method used in that article; and in that kind of muckraking I see no advantage for any honorable cause. Let me particularize:

The article begins by stating the author's plan to show "to the citizen of one community the corruption of a court in another community," and continues by referring to "how widely the corruption by direct and indirect corporate influence has extended." He proceeds to emphasize railways as a special influence of that sort; "in many a state, litigants who approach the courthouse find that there is a railway side-track leading into the court-room, and that the locomotive blocks the door to justice." Then, taking the state of Missouri for his first illustration, he speaks of the Missouri Pacific Railroad as requiring to "look to the complexion of

the Supreme Court of Missouri," and as securing for its lobbyist a political boss who "got more of his friends on the Supreme Bench of Missouri" than a certain other boss. The entirely obvious meaning, which the author does not choose to state in so many words, is that the Missouri Pacific Railroad had a corrupt control of the personnel of the Supreme Court. Then follows the supposed proof or illustration, in the shape of two decisions of that court; these, as stated by the journalist, are adapted to make the reader feel that the corrupt tree has naturally brought forth evil fruit.

Now I shall not burden these pages with any labored attempt to analyze the decisions he uses and to show that any intelligent lawyer would realize that there was another side to both of them. Both dealt with general principles which are intrinsically hard to handle and have long been the subject of differing views in the various courts of this country and England. On such points, the decision of a Supreme Court one way or the other throws no more light on the corruptness or honesty of its personnel than does a man's vote for the Republican or Democratic ticket; it merely shows that the other person's view differs from ours, and perhaps that he is wrong and we are right.

But what I desire to call attention to is the unfair use made by the journalist of those two cases to prove or illustrate his point that the Missouri Supreme Court is the corrupt tool of the Missouri Pacific Railroad. And here is how he misrepresents them:

(1) One of the cases is *Murphy v. Wabash Railway Co.*, 1910, 228 Mo. 56. I pass over the circumstances that the journalist refrains from giving the citation; also that it is not a Missouri Pacific case. Now, assuming that the judicial doctrine in this case as represented by him is open to criticism, what he has done is to *represent as a decision of the Supreme Court the dissenting opinion of a single judge* of that court. Anyone who desires to verify this may consult the above citation. The *fact* was that the Supreme Court decided *for the plaintiff and against the railroad*, with one judge out of the seven dissenting. Yet the journalist cites this dissenting opinion's language as one of his two illustrations of the corrupt control of the court by the railroad!

(2) His other instance is the case of *Oglesby v. Missouri Pacific Railroad*, 1903, 177 Mo. 272, a case which has been several times to the Supreme Court between 1893 and 1903. Note that the journalist again does not give the citation of this case in any of its five reported decisions; and I have not tried to follow up the earlier ones. But the fact is that the above and last decision was by a divided court, four to three, in favor of the railroad; that the first three were in favor of the employe-plaintiff, and that in two of those three the court stood six to one; while in the

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fourth instance the decision in favor of the railroad was made (as I infer from the fifth opinion) only by a majority of four to three. In other words, during those ten years, while the various members of the court gave 35 votes in all on the case, *a substantial majority*, at least 22 and perhaps 24 of the 35 votes, were *against the railroad*. And yet that case is used by the journalist as his other proof or illustration that the Supreme Court of Missouri was controlled by the railroad!

Against a campaign based on such methods of misrepresentation, I protest. The people need the facts about justice and the courts. But what they need is facts, not misrepresentations. Reform is needed, somewhere, somehow. But what intelligent citizen can say where or how, if he finds that he is being fed with garbled facts, which are not facts at all, for the purpose put forward?

The worst thing that can happen to the cause of reform is to have such champions. I wish that they would put up their muckrake on their shoulder and go off quietly to some other stable, and leave the cleaning of this one to people who are willing to restrict themselves to the methods of fair controversy and the "square deal." Demagoguery has no place on either side in the honest clash of views between Conservatism and Progress.

JOHN H. WIGMORE.

RACE IMPROVEMENT.

One of the questions that must persistently come to the front in the minds of thinking educators and social workers is this: Does all that we accomplish in the way of individual improvement of delinquents and defectives of every other sort stop with the individual who is immediately affected, or does it extend to the stock of future generations, that is, to the race? Because of the meager evidence for the extension of these accomplishments it is generally assumed that the most that can be expected is the improvement of the individual directly affected. Some qualification is called for. As a matter of course a group of people who have been reached by our social agencies make their own environment, which is a grade better than that from which they came. To this environment the next generation is heir and consequently it comes upon the stage with an advantage. In a similar manner further successive advances are accomplished. This leaves the fundamental question of *stock* improvement untouched. It increases our sense of responsibility in the matter of protecting each succeeding generation. Under this conception our devices are superficial rather than fundamental. They are in the nature of treatments of symptoms rather than causes. The problem is approached by the biologist through the doctrine of chance variation and natural selection of the fittest for survival. But the problem here is dis-

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inct from that of the biologist. Here we are thinking of the effect of variations that are produced, not by chance, but voluntarily through the efforts of the practical psychologist, educator, or social worker. Furthermore, we are interested in biological variations only in as far as they may be the effect of environmental forces.

Recently there has come to light the results of anthropological researches which possibly imply support for the proposition that the stock may be improved directly through the influence of the environment. I refer to the investigations by Boas into the departures from the original physical type which have been observed in the descendants of immigrants in America. All characteristics such as stature, which without doubt are due to nutrition, are not considered. Attention is drawn solely to such supposedly stable characteristics as length and breadth of skull and facial angle. These characteristics differ in American-born children of immigrants from corresponding features in foreign-born children of immigrants and from those of their parents. For instance, in the case of the Sicilian, the length of the skull in proportion to its breadth diminishes, whereas the reverse is true of the Bohemian. These modifications, moreover, are more marked in the case of children born three years than in the case of those born one year after their parents' immigration. The fact that the situation is reversed between the Bohemians and the Sicilians and certain other facts which I do not recount in this place, suggest that the effects can hardly be due to mechanical influences such as the pressure of American as distinct from foreign headwear (if there is a distinction). Indeed, it is safe to say that the effect cannot be traced to mechanical causes of any sort, and Dr. Boas does not yet believe that it is due to improved nutrition or to the reverse. As far as we can go at present is to say that it is due to changed environment. Dr. Boas is not yet ready to say how permanent the modifications referred to may be.

Now we come to the significant matter. If under the influence of the environment changes may be brought about and accumulated through successive advances in the relatively stable features referred to above it is less difficult to think that corresponding changes in the nervous system, which is more open to modification, may accumulate also. Then since mental and neural, especially brain processes, are apparently correlated, we should have to say the same of mental as of physical modifications. We could then answer the question proposed above in the affirmative.

At the present stage of our knowledge the foregoing is certainly no more than hypothetical. Even if it were assumed that the stock of

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the race may be improved through educational and other social advances acting upon the environment, we should still be compelled to recognize the fact that there are opposing agencies. These agencies are almost omnipresent and at the same time frequently so disguised that it is practically impossible to maintain continuously that environmental condition which might otherwise possibly favor the improvement of the stock. Among these unfavorable forces is the changed economic status of the mothers of thousands of the present and past generations which makes them wage-earners and thus subjects them to a strain of life to which they are unfitted and all to their own and their offsprings' detriment. Hence we are face to face with the deterioration of the race and our work must continue to be negative quite as distinctly as it is positive--to keep away harmful while we provide beneficial influences.

ROBERT H. GAULT.

A PROPOSAL FOR OFFICIAL EXPERT WITNESSES.

It has been frequently proposed that there be designated in some way official experts in certain special fields who may be called as witnesses in cases in court involving questions in such special fields. One such proposal is embodied in a proposed statute for the state of New York in an article by Albert S. Osborn in "Fair Play" for January 13, 1912. The reasons advanced for having official experts are mainly that competent experts may be secured, and opportunities for venal and corrupt experts lessened. It is a violent assumption, however, that this object would be accomplished by the appointment of official experts. Such appointments would be sought after by those least qualified for them, and not by the men of the greatest ability and standing in their various fields. It would be too much to expect that the most competent men would be obtained for those positions. It would be difficult to obtain them, and such a provision would be simply opening another door to the endeavors of those who are unscrupulous and lacking in ability. Such a provision is an attempt to add something to the intrinsic worth of the testimony of a witness by giving an official sanction to it. In the case of a man of high reputation and standing and ability, the official position would add little, but it might add much in the case of one of little ability or probity, who might in some way secure such an appointment. The loss would more than overbalance any gain. But such a provision would seem to be particularly objectionable, because it places emphasis on the personality of the witness rather than on the substance of his testimony. The personality of the witness should have nothing to do with the case, except as affecting his

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credibility. The main concern is the information he may impart to the jury. The best and most rigorous test, both of the honesty of the witness and the correctness of his testimony, is the test of cross-examination. An incompetent or venal expert, who might secure an official appointment, could to some extent hide behind it from this weapon. If the cross-examination does not always completely fulfil its functions, it is because of the lack of skill or ability of the examiner in the use of it. It remains, however, the most satisfactory test of the witness that has been devised, both in rigorousness and comprehensiveness. To weaken it in favor of a partial method of uncertain operation would seem to be a doubtful experiment.

EDWARD LINDSEY.

IMMIGRATION AND CRIME.

In the January number of the *American Journal of Sociology*, Dr. Issac A. Hourwich, statistician in the Bureau of the Census, has a timely article on "Immigration and Crime." He takes to task the report of the New York State Superintendent of Prisons for 1909, which charges that the recent increase in crime in the state of New York has been due to the influx of vicious and ignorant classes through immigration. Dr. Hourwich has no difficulty in showing that there is no direct connection between immigration and crime in the United States, popular opinion to the contrary notwithstanding. On the contrary, as he shows, the wave of criminality in New York state, of which the superintendent of prisons complains, coincides with the lowest ebb of immigration, whereas the high tide of immigration for a number of decades past has coincided with a decrease of crime.

What Dr. Hourwich proves in his interesting paper has, of course, long been known to statisticians and sociologists, namely, that there is no *direct* connection in our country between immigration and crime. On the contrary, the average foreign-born citizen of this country is, if anything, slightly more law-abiding than the native-born white American. This is especially true of the immigrants from northern Europe and also of those from Russia. In general, these people come from countries where government and criminal courts are more efficient than in the United States. Hence, among immigrants from such countries there is greater respect for law, despite the fact that these people are away from home in a strange environment, than there is among the average native-born Americans. As Dr. Hourwich shows, the increase of crime corresponds not with the increase of immigration, but rather with periods of economic and industrial depression. In other words, the economic prosperity which favors immigration tends at the same

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time to lessen crime, while, *vice versa*, economic depressions check immigration and at the same time tend greatly to increase crime. These familiar sociological truths, Dr. Hourwich demonstrates beyond any serious question.

However, he carries the implications of his argument much too far when he allows the impression of his article to be that there are no grounds for putting any restrictions upon immigration whatsoever (beyond those which now exist) in criminal statistics. He neglects to mention the well-known fact that while the immigrants from northern Europe are generally law-abiding, some of the immigrants from southern Europe add considerably to our criminal classes. Thus, the Italians in 1900 constituted but 4.7 per cent of our foreign-born population, while in 1904, according to the prison census taken in that year, they furnished 14.4 per cent of the foreign-born white major offenders committed to prison during that year. In other words, even though we allow for a slight increase in the proportion of Italians among our foreign-born between 1900 and 1904, apparently they contributed nearly three times their proportion of major offenders in comparison with other foreign-born elements. Prof. Fairchild, in his book upon "Greek Immigration," has shown that the same thing is true also of our Greek immigrants. In other words, the exaggerated criminal tendencies of certain of our immigrants from southern Europe is offset and concealed in statistics by the law-abiding tendencies of our immigrants from northern Europe.

Again, while there is no direct relation between immigration and crime in this country other than that which has just been noted regarding certain classes of immigrants, there probably is a very great and obscure indirect relation. This is suggested by the well-known fact that while the foreign-born themselves do not contribute out of proportion to their numbers to the criminal classes, the children of the foreign-born apparently do. The special prison census of 1904, for example, says "of the native white prisoners [committed during 1904] 29.8 per cent were of foreign parentage, while of the entire native white population only 18.8 per cent were of foreign parentage." In other words, the children of the foreign-born in 1904 contributed nearly 60 per cent more in proportion to their numbers than they should have contributed to those convicted and sent to prison. While this does not suggest that there is any necessary relation between race or nationality and criminal tendencies, it does suggest that there is a very considerable indirect relation between our present unregulated immigration and crime. Our immigrants, in other words, frequently fail to better their

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condition by coming to this country, and while they themselves may not drop into the criminal class, their children frequently do.

Again, the very great criminal tendencies among the native-born whites in this country may be perhaps in part ascribed to the competition which free immigration has brought to the lower elements among the native whites. As Dr. Hourwich himself has demonstrated, there is a close connection between disadvantageous economic circumstances and crime, and there can be scarcely any question but that the native white laborer in this country has very often found himself in disadvantageous circumstances on account of the overwhelming influx of cheap foreign labor. The whole question, therefore, of the relation of immigration and crime still remains an open one in spite of what protagonists for restriction or non-restriction have had to say.

C. A. ELLWOOD.

THE FEEBLE-MINDED DELINQUENT.

The introduction of a bill into the New York legislature providing for the establishment of a custodial asylum for feeble-minded male delinquents brings to a focus in that state the problem of the mentally defective prisoner. For over a year a committee of the Prison Association of New York has stimulated interest in this problem. During the past year, several institutions in New York have given careful attention to the question, and at the beginning of 1912, through arrangement with the commissioner of corrections in New York City, a careful card index was installed in the "Tombs," which gives to the psychiatric examiner of the Prison Association a chance to discover in each entering prisoner any signs of mental defectiveness. Dr. Parker, the above-mentioned examiner, estimates that at least 1,500 men pass through the Tombs each year who are mentally defective and semi-responsible.

The proper treatment of the feeble-minded delinquent is one of the most important problems now before the penologists and criminologists of this country. Its significance is especially appreciated by the institutional heads who see their prisons and reformatories "clogged," as they often express it, with mentally backward and deficient prisoners, who, in the words of Dr. Christian, of Elmira Reformatory, "have no place in a reformatory in the first place, and are a hindrance to its work for the brighter boys."

The proportion of feeble-mindedness in institutions is not yet generally established. Dr. Christian, by estimating those who impress him at once or gradually as mentally defective, believes that even 40 per cent of the inmates of Elmira Reformatory fall under the head of the mentally defective. Dr. Goddard, of Vineland, believes that all

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feeble-minded persons would be delinquents unless carefully guarded. The State Board of Charities and the Prison Association of New York are both conducting an active campaign to focus popular interest upon the problem in the state of New York.

That there is need of segregation, few now deny. The classic example of the Jukes family (the original records of which family were recently found and are now being brought down to date by the Carnegie Institute at Cold Spring Harbor, N. Y.) has proved what the terrific cost of unchecked degeneracy is to communities. Tests, such as those of Binet and Healy and Huey, are now being studied and adopted in many an institution.

A word of warning from one whose work it is to secure legislation in New York state is perhaps in order. Many statements are being made as to the prevalence of feeble-mindedness. We find even such extreme conditions as those cited by Dr. Goddard in connection with a recent study of normal and abnormal mental conditions in one hundred children in the children's court of an eastern city, in which the ninety-seventh child was declared normal by Dr. Goddard. Dr. Goddard has a splendid national reputation, and we can depend upon his carefulness and conservatism, but it behooves us all, who are seeking the establishment of adequate facilities for the custodial care of the feeble-minded, not to accept any results but those guaranteed by the strictest investigation and the most conservative of reputations. There is danger in the half-finished or too hastily announced results of tests performed, perhaps, by recent learners, who stand aghast at the very large percentage of inmates who seem to fail to measure up to the tests applied.

The problem is just now in the foreground. Sympathy is notably frequent in the discussion of the question; legislators are inclined to see a great light. The light must be a true light, not a flickering jet or a sudden explosive puff. It behooves those of us who are not scientists to bide our time; to make all efforts to have any proposed study a real scientific study; to hold back conclusions till they can be checked up; to bring about, so far as in the nature of the problem lies, the standardization of tests, and to realize that there can be a most disagreeable and humiliating rebound in statistics and alleged percentages that have not been gained under conditions excluding so far as possible the chances of error.

O. F. LEWIS.