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Editorial

EDITORIALS.

THE LAWYER'S OPPORTUNITY.

The lawyer of the twentieth century must necessarily be a very different man from the lawyer of the nineteenth century, just as the lawyer of the nineteenth century was a different man from the lawyer of the eighteenth century. He must face new conditions, solve very different problems, and advise clients whose troubles are not the old troubles, but new ones arising from new conditions and the operation of novel and experimental laws designed to readjust social, civic and business relations in accordance with changed conditions and changed ideas of human duty and responsibility.

He can not maintain the prestige and influence which the profession has always enjoyed if he stands with his face to the past, and deprecates all changes as changes for the worse. The man who is forever talking about "the good old times" and deprecating the woeful degeneracy of the present day *may possibly* be a Jeremiah sent from God to rebuke a recreant race, but he is more likely to be the false prophet of an equally false god.

"As it was in the beginning, is now, and ever shall be, world without end" is doubtless true with regard to the majestic sweep of the universe through infinite space, but it is certainly not true as applied to the affairs of men.

We can not stand still even if we would; the astounding discovery of today becomes the familiar fact of tomorrow, and the archaic curiosity of the day following. With the accumulation of human knowledge there comes an ever increasing rapidity of change in economic, legal and governmental conditions, and to attempt to meet the changed conditions by blindly applying the economic and governmental theories of a preceding century, without change or adaptation, is to attempt to put modern civilization in a medieval straight jacket.

Among the changes which marked the closing years of the nineteenth century and which still more distinctly mark the opening years of the twentieth century, there is none more noticeable than the marked change of attitude on the part of the public toward the problems connected with the administration of the laws by the courts and the bar.

It is not many years since the great mass of the people seemed to regard the administration of the law as an occult science, whose defects and shortcomings, however lamentable, must be regarded as necessary and unavoidable evils, which for some unknown but entirely sufficient reason must forever exist and be endured.

True, some decision of great public interest, like the Dred Scott decision, might at times challenge public attention and arouse a storm of indignation, as well as a demand for a change in the court which made it, but as to the great mass of cases the ordinary attitude of the people was that of entire helplessness, or rather of submission to the inevitable. If the courts and the lawyers said that such was the law, it was accepted, if not with pleasure, at least with resignation, and with the reflection that there must be some good reason, which the judges and lawyers in their inscrutable wisdom knew but would not divulge, why the law must work injustice. There was little or no inclination to seek a remedy and apparently little thought that any remedy was possible. Were there long delays which amounted to a denial of justice? Did the law miscarry and become an instrument of oppression? Did the red-handed criminal go unwhipped of justice? Even so, these were but necessary minor defects which must always exist; and, forsooth, was not the English legal system as revised and improved on this western continent the best system which the world had seen? Perish the thought that anything was the matter with it; to argue seriously that it or its administration was defective was the nearest approach to the heinous crime of *lese majesty* known on this side of the broad Atlantic. Like the epidemics of cholera, the diseases of childhood, or the ubiquitous housefly, these apparent evils all were thought to have their appointed place in the economy of nature, and to carry out some certain but well concealed purpose of the Great Creator.

This supine and very edifying folding of the hands in meek submission to the supposed supreme will no longer prevails. There has arisen instead a great body of skeptics and faultfinders. They are strangely averse to accepting without question the dictum that all these are necessary evils. They fairly bristle with questions: "Why is it necessary that there should be epidemics of cholera or yellow fever? Why must a child have the so-called infantile diseases and incur the risk of lifelong impairment of intellectual or bodily powers, or both? Why must the housefly or the equally detestable mosquito be endured? And above all, why may not justice be had without

denial or delay, as promised on the plains of Runnymede nearly seven hundred years ago?"

To these active and earnest souls the stereotyped answer that these minor evils are inevitable and should be accepted with pious resignation as chastenings from the hand of an allwise Providence is no answer at all. They utterly decline to subscribe to any such confession of human impotence. With admirable courage, if not always with entire wisdom, they are attacking the defects and imperfections in the administration of the law, and they do not propose to wait for the action of the bench and bar. If bench and bar choose to aid, their assistance will doubtless be welcome, but if it be lacking the movement will not wait on that account, but it will go forward with greater speed and less discretion, for its leaders will be radicals and doctrinaires who have not experienced the practical difficulties which are always in the way of such reform.

Will the bench and bar appreciate the greatness of the opportunity and give wise, sympathetic, and constructive aid to the great movements now in progress to simplify court procedure, to eliminate technical pitfalls from the path of the litigant, to humanize the administration of the criminal law, and to mold legal and economic conditions so that individual effort may have its due reward, and at the same time that life shall have its message of brightness and hope for all?

I hope so and I believe so; in no other way can the legal profession maintain the prestige of the past, in no other way can it maintain its place among the foremost of the great professions of the world.

JOHN B. WINSLOW.

RACE IMPROVEMENT THROUGH SOCIAL INHERITANCE.

In the last issue of this journal under the title, "Race Improvement," the writer briefly discussed a bit of evidence from which one may possibly infer improvement of the racial stock as a result of individual acquisitions gained through contact with the environment. In that connection the factor of social inheritance, which makes each successive generation heir to whatever improvement in the environment its predecessors may have effected, was referred to incidentally. Where they have uprooted vicious influences, or strengthened social defenses, or positively supplied new agencies that offer new opportunities, there the succeeding generation comes upon the scene with an advantage. This may appear, from one point of view, to be in the nature of a superficial treatment of symptoms. Undoubtedly, however, it is from

this source that we are justified in expecting the greater impetus toward the improvement of the race, whether or not it is accomplished by means of modifications in the stock. And it is not superficial. On the contrary it goes directly to the problem of providing for the most complete possible development of each individual who enters into and hence helps to create the social environment.

This puts the provision for social inheritance upon a fundamental basis. To secure such inheritance is one function of the education of the individual. The process of education comes within the limits of psychology. The question, therefore, may be conceived from a psychological angle. It is a matter of selecting, arranging, and applying the stimuli or environmental influences in such manner that the way may be opened or the occasion provided for those mental attitudes or those forms of behavior that by common, tacit agreement should be perpetuated. Like every other educational activity it is a psychological experiment or demonstration on a broad scale.

This conception is the ground-work of an illuminating article in the April issue of the *Yale Review* by Havelock Ellis on "The New Social Hygiene," and also of a little volume by C. W. Saleeby on "The Method of Race-Regeneration." This volume is in the "New Tracts for the Times" series published by Moffat, Yard & Company. Legislation alone on questions of eugenics goes wide of the mark. Its effect is negative at best. It may keep undesirable influences in the background and thus prevent the contamination of an individual's environment. But the effectiveness with which it can accomplish this negative good and its efficiency as a positive force as well depends upon its administration, and hence upon the mental attitude and the habitual behavior (products of the process of education) of the citizens of the community. The State of Illinois, by the way, has a statute which provides for compulsory education up to the age of sixteen years in the case of youths who are unemployed at the normal age for completion of the elementary school course. Notwithstanding this law, there are nearly 25,000 unemployed children between the ages of fourteen and sixteen who are idling their time and breeding crime in the streets of Chicago. This is only one of a hundred facts that might be selected to support the proposition that the education of the individuals who compose a community must be secured before any other agencies for the improvement of the race can be effective. Public sentiment alone can make legislation for eugenics or any other purpose worth while. No law or mutual agreement that requires health certificates as a prerequisite to marriage can, unaided, go far in

the production of a more substantial race unless the individuals to whom the law or agreement is to be applied are educated to the point of supporting it loyally. Without enlightened public support such attempted regulation may easily stimulate evasion of the law and deterioration of morals among those men and women to whom health certificates are denied. This would be a sorry result of a praiseworthy effort.

In the interest of race improvement or regeneration, therefore, we must look primarily to the education of the individual; to education that emphasizes not only the value, but the necessity of social co-operation in every movement that makes effectively for the development of those vigorous, adaptable individuals who are to make the social environment for tomorrow. Until the individual men and women in our cities shall have learned strictly to co-operate among themselves and with institutional agencies to enforce the laws that are designed to protect the youth against the vicious atmosphere of the street and to provide positive stimuli for health of body and mind: until that ideal shall have been realized we shall have to be contented with slow and uncertain progress toward race regeneration through social inheritance.

ROBERT H. GAULT.

A WIDESPREAD FORM OF USURY: THE "LOAN SHARK."

By the laity, and pretty generally by lawyers as well, usury as a crime or as a civil injury is looked upon as a matter of historical or literary interest, but its widespread and destructive influence is not generally recognized. In most minds usury is connected with "The Merchant of Venice," and it is generally thought that Shakespeare was caricaturing a vice somewhat antiquated even in his day. This, however, is not so; it flourishes in our great cities and on the continent today with as much, if not greater, destructive force than ever before. In our country, the "loan sharks" are a form of this socially destructive force which should be practically attacked. They have no monopoly, but they are peculiarly offensive in that they fatten upon the small wages of the proletarian. They, therefore, are peculiarly vicious from an individualistic standpoint in that their victims are deprived the necessities of life. In the case of a young man he is prevented from attaining the financial growth of which he would otherwise have been capable, and in the case of an old man his wife and children are made to pay the costs of his victimization. From a social standpoint, "loan sharks" are peculiarly vicious because

they attack that class which is on the borderland between financial success and stability and poverty and instability. That the effect upon society is a large impoverished class with consequently criminal tendencies, needs no proof.

But before taking up the special case of the "loan sharks," it is well to review very briefly the question of interest. Miraglia writes in his book, "Comparative Legal Philosophy" (1): "Interest is profit gained by renting capital. It has been regarded from a biased point of view, and has been held in ill repute from moral and religious prejudices." In other words, the Christian precepts and the mistaken Aristotelian doctrine prevented for a long time a recognition of the legitimacy of interest. But interest should be recognized. Money is economically productive and interest is therefore undeniable. Money is a merchandise, and rent should be paid for its use. Usury exists where the rental is too great, economically. "Usury consists of a debt without a corresponding loan." In the determination of usury, consideration should be given to the value of money as merchandise at that time and of the risk; the risk, of course, being determined by the financial liability of the borrower. From this brief statement of the case it at once clearly appears that usury determined by a maximum of legal interest is philosophically and juridically wrong. In fact, we may add that it has been abrogated in the countries more advanced in juristics. This does not mean, however, that there is no such crime or civil injury as usury.

Stein, in his book on usury, points out that it is of two kinds: simple and seductive. In other words he holds that a contraction of a debt without a corresponding loan, the charging of an excessive rate of interest is simple usury and no crime; whereas usury consisting of a scheme by which a creditor deceives his debtor and repeatedly increases the amount of the debt by use of threats, blackmail, or inducements affecting the hope of repayment, is seductive and a crime. This distinction has been doubted, its opponents alleging that simple usury is practically non-existent, and that all usurers fall sooner or later into the commission of fraud. We are not interested here, however, with the distinction of the two usuries, or even with the question as to the distinction of their criminality.

Usury, of course, can be stopped. It is a question of price. Publicity seems the fairest and surest method to do away with it with the least effect upon financial credit. The law of the maximum, as

(1) Boston, 1912; page 598.

can be seen from the outline of interest which we have given, is apparently illogical, and if enforced would destroy many large businesses where the risk involved is so great as to prevent their serious consideration as a six per centum investment. Only complete and absolute publicity can prevent usury, and this of course affects to a certain extent the economic equilibrium, but with our increasing sense of juristics and the increasing feeling of the unity of society, the time may come when publicity may be adopted. Should such a system be effected and the price paid for money accurately known, competition would soon result in the destruction of usury.

But to come to our particular branch of the subject, one that is practical, we must consider the best way to deal with "loan sharks" at the present time and under existing laws, leaving for the future (though we may express the hope that it will be a very near future) the discussion of the philosophical and juridical reforms of usury laws in general.

To resume, briefly, the *modus operandi* of the "loan sharks." A workingman with no collateral desires ready money and goes to the office of a "loan shark" to borrow $10. He is told at once that they are a substantial company and never lend less than $25, whereupon X, duly impressed by their importance and honesty, borrows $25. He generally borrows it of a company out of the jurisdiction, the man to whom he makes application telling him that he will act as the borrower's agent to effect the loan. This precaution, however, is sometimes omitted. He then is given $24 in cash, $1 being deducted for notary charges, and is made to sign four promissory notes for $9 each and an assignment of his wages to accrue, covering all wages earned in any employment. If he makes his payments of $36 all is well and good, but if he is late in any payment his note is protested at a cost of $1.50 a note. (I have never seen the notary's protest, however, in any case which has come to my notice.) If he fails in payment for any length of time he is told that a copy of his assignment will be served upon his employer, who will hold his wages to the use of the loan company. Frightened by this, the poor man returns to the "loan shark" who tells him that he will help him out by lending him on small terms sufficient money to make up the deficit plus the charges, and thus obtains a larger debt against him. When the loan is as large as the "loan shark" can hope to collect from any accrued wages, the assignment is served upon the workman's employer. In most cases this results in his immediate discharge, the "loan shark" collects his wages, and as much money as has been obtained is

credited to the workman, and he is allowed to work with another employer until some wages have accrued, when another copy of the assignment is served. Thus we see that the effect is to keep the poor man constantly paying to his utmost while the debt with interest and its incidental charges is constantly increasing against him. We may note that the action of the employer in discharging the workman cannot be blamed and is inevitable since a large corporation, for instance, cannot afford to have its pay-roll constantly disturbed.

Under existing law it is very difficult to prevent a "loan shark" from prosecuting his trade. His debtor does not usually consult an attorney until after the assignment has been served, and the debtor is usually so hampered financially that the attorney is hampered in his efforts to aid him. Success, however, has attended the following course: The client swears to an affidavit stating that he will pay the loan company on receipt of his wages and that he will prosecute his case before the next pay-day, upon which most employers will pay him the wages on hand. He immediately tenders the full debt and six per centum to the loan company and proceeds to file a bill in equity alleging usury and the illegality of a general assignment of wages. In my experience the loan company does not defend and the costs of the equity suit, including preliminary and final injunction together with the bond and printing, is a strong deterrent against the loan company's repetition of a refusal to accept the tender. This plan has been successfully worked in Pennsylvania in *Brown vs. Loan Company,* No. 3003, March term, 1911, and *Ruth vs. Loan Company,* No. 5055, March term, 1911, in the Common Pleas No. 1 and No. 4 of Philadelphia county. This seems to be the only practical legal means of fighting them at present, as a prosecution for usury is generally inadequate and impractical. We may add that this remedy is unsatisfactory from many points of view. It does not prevent the "loan shark" from proceeding with his trade and it deprives him of what is properly his due, as a legal rate is not usually commensurate with the risk in the class of loans that he makes. Furthermore, in New York the courts have refused to follow this line of reasoning, and have refused to aid the borrower, holding that there is no essential equity in his action. In many jurisdictions a general assignment of wages is recognized. The dictum of Judge Hare in *Fairgrave vs. Navigation Company,* 2nd Philadelphia, 182, is not favorable to this theory on the grounds of public policy, as is the Supreme Court in *Jermyn vs. Moffitt,* 75 Pennsylvania, 399.

In conclusion we can only repeat what we have already stated, that the present methods of fighting the "loan sharks" are inadequate and unjust, and that new legislation is required before this pest to society can be overcome. The suggestion has been made before, and we thoroughly indorse it, that a system of publicity requiring the recording of such transactions is the only method for overcoming usury. Such a method will overcome it by competition and will not harm the man who desires to make large profits through charging a proper sum for the risk in loans without security. We cannot lay too much emphasis upon the number of companies at present engaged in usurious loans of this kind nor on the resultant social deterrent, nor can we emphasize too greatly the consequent need for radical reform based upon a thorough study of the methods of usury.

JOHN LISLE.

LOCAL SENTIMENT AND LYNCHING IN PENNSYLVANIA.

In a previous article (this journal, January, 1912, p. 669) the writer pointed out a fundamental weakness in our citizenship, namely, disrespect for law. He said: "In homicide cases it is clear that many defendants are acquitted in spite of the fact that evidence of the killing is clear and that the law says the act is murder. They are acquitted because the jury, representing often the sentiment of the commuity, believes that a killing is justifiable in cases where the law says it is not." A review of newspaper comment contained in the *Literary Digest* for May 18, 1912, at p. 1023, seems to bear out the truth of the above remarks. A negro murderer was burned to death by a mob at Coatesville, Pennsylvania, a conservative and aristocratic community. The negro had killed a special policeman. The *Gazette-Times* points out that "the lynching of Walker was not provoked by that crime which results in so many outbreaks in the South. It was entirely lacking in the alleged justification which is pleaded in extenuation of such tragedies in other parts of the country." Nor does it appear that there was any reason to fear that the murderer would not be given proper punishment in a trial by the properly constituted authorities.

Fourteen of the alleged lynchers were indicted. Seven of them were tried. The trials were held at the county seat of Chester county and not at Coatesville. The *Digest* reports that the evidence was generally considered conclusive of guilt, yet the first seven to be tried were found "not guilty." As a result Acting District Attorney Gaw-

throp and Deputy Attorney-General Cunningham asked for a dismissal of the seven untried cases. Judge William Butler at West Chester on May 2 made the following remarkable statement: "My first thought, when I heard of this crime, was that it would be difficult to secure justice for those accused. . . . Now, I am absolutely convinced that it is impossible to get twelve men in this county, by the methods necessarily to be used for that purpose, who could, *no matter what the evidence is,* bring themselves to convict anybody who was connected with this offense. I do not say this in criticism, but I say it in sorrow. At a former term of court we had a double panel of jurors, and they were as good, reliable men as could be found in this county, or could be found in any other county. Six cases were tried, and there was occasion, to say the least, for the jurors, with the most anxious effort, deliberately to consider the proofs and endeavor, under the evidence before them, to determine whether the accused's guilt was proved. *They did not do so.* I do not criticise their verdicts. I criticise the circumstance that they manifestly did not consider the evidence. They did not take time to consider it."

Of course no one at this distance may know whether the individuals accused were guilty or not. The jury found that seven of them were not guilty. The significant matter is that the juries did not consider the evidence, in the opinion of Judge Butler, and that this attitude of the jury is condoned by the sentiment of Chester county, in the opinion of the newspaper writers. If this were only one case, or if it related to only one community, or if it were confined to one form of crime, although we should have cause for shame, we might still feel free from fear as to the position of our citizenship on law enforcement. Unfortunately this attitude of juries and this condition of sentiment is not confined to one community, nor to one form of crime. Everyone knows of the difficulty of enforcing certain laws in certain communities. Where will we end if juries and communities continue to decide whether law shall be enforced according to extra legal standards?

Laws forbidding crime have the same meaning in each part of the state, whether the law is in the form of common law or statute. As actually enforced they sometimes have a very different meaning. Would the juries and communities which are responsible for this state of affairs be in favor of the following suggestion, namely, to amend our criminal codes to provide that juries shall not be bound by their oaths to give effect to any law where the prevailing moral sentiment of the community does not approve of the law? This might strike

them as a revolutionary and indefensible proposition, but it would have the merit of avoiding violation of the oath. But it is to be doubted if any member of the numerous mobs which have participated in lynchings would approve of a law making lynching legal. They and others are willing to do illegal acts, to cast disrespect upon the law in general, but they would not wish to have their practices made legal for others and perhaps not even for themselves. This may give us some ground for the belief that respect for law is not entirely dead with the members of mobs.

To many it seems that we need a national revival to awaken us to our responsibility in this matter. Courts, lawyers, churches, schools and individuals have a duty in this respect. It is the duty of all to obey the law, to uphold those who would enforce the law and to preach the doctrine of respect for law to those who lack in respect.

C. G. VERNIER.

PAROLE FOR LIFE TERMERS.

While advocating in the *Zeitschrift fuer die gesamte Strafrechtswessenschaft* [v. 31, 8], the continuance of the death penalty in Germany, in connection with a discussion of the proposed new penal code of that country, Dr. H. Seyfarth, the chaplain of the Hamburg Central Prison, advocates conditional liberation after a sufficiently long term of years for those committed to prison on life sentences. For time sentences the maximum of fifteen years has until now been preserved, and the proposed penal code omits from any chance of liberation those committed to life imprisonment. In the *Gegenentwurf,* an opposition penal code urged by many of the leading criminologists of Germany, provision is made that the life prisoner may, at the end of twenty years, be paroled under certain conditions, and that he may be returned to prison in case of unsatisfactory conduct, thus matching the present practice of the state of New York in the case of those committed to prison for life. England allows conditional liberation to occur after fifteen years of imprisonment of a life sentence, and the following minimum terms are cited by Dr. Seyfarth: Austria-Hungary, Croatia and Bosnia, 15 years; Switzerland, between 15 and 20 years; Finland, 12 years; Norway, but 10 years, while Sweden grants no chance to the "lifers."

Answering the comment that the "lifers" are so few that the proposed penal code has not considered it practical to extend conditional liberation to them, Dr. Seyfarth maintains that there are at present at least one hundred life-termers in the German prisons. "One should

sentence these men to long terms of from 20 to 25 years, but they should not be entirely robbed of the hope that at some future time, under favorable circumstances, they may again hope to be freed." The writer advocates a considerable parole period, because "during the term of imprisonment in enclosed prisons, every freedom of movement is systematically prohibited to the prisoner. The prisoner is thus made dependent, and when released suddenly he is like a bird with lame wings, every initiative being lacking, and he easily succumbs to temptation." O. F. LEWIS.

ANNOUNCEMENT.

The readers of this Journal will welcome the addition of the following named gentlemen to the editorial staff: Victor von Borosini, Sociologist, Chicago; James W. Garner, Professor of Political Science, University of Illinois; William E. Higgins, Professor of Pleading and Practice, University of Kansas; Smith Ely Jelliffe, Managing Editor, *Journal of Mental and Nervous Diseases,* New York City; and John Lisle, of the Philadelphia Bar.—[EDS.]