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# Editorial

# EDITORIALS

## REFORMATORY RESULTS IN NEW YORK.

The Board of Managers of Reformatories in the state of New York have just issued their report covering the year ending September 30, 1913. In 127 pages they have incorporated results of their reformative work with which all the readers of this journal should be on familiar terms. The report will appeal particularly to those who are interested in parole and in prison schools or methods of social education, while from the psychological angle we find here an excellent illustration of the analysis of the external conditions that affect human behavior.

No doubt state reformatories everywhere are meeting with increasing difficulties in accomplishing their work. This is the experience at Elmira and Napanoch Reformatories—the two institutions covered in this report. This fact must be taken into consideration in measuring the results of reformatory life. The growing burden of the reformatories is due to one great fundamental fact: the courts are more and more completely reacting to a conception of their function as educators in the broadest and best sense of the term. The juvenile courts, and others as well, are employing probation more extensively than ever before. The reformatories get those who fail as probationers; the dregs of the system. Other courts are committing an increasing proportion of offenders to reformatories rather than to state prisons; another expression of the educational "spirit of the age." This gives the reformatory an older and consequently more confirmed criminal who is for this reason less responsive to educational influences than his younger accomplice. The courts are realizing more and more clearly that much crime is due to mental defects on the part of the offender, and when such defects are known there is an increasing tendency to commit to a reformatory on the theory that there is the place where the delinquent will be most likely to secure the educational treatment that is suitable to his peculiar disposition. Those in the two New York institutions mentioned above who are recognized as feeble-minded in one form or another are estimated conservatively at 42 per cent of the reformatory population.

This increasing liberality on the part of our courts—liberality that is no kin to weak sentimentality—is set forth in strong relief now and then when even a judge asserts that the time will soon be here when

the court and jury will simply convict and leave the prisoner in the hands of a central bureau for thorough examination by experts who will try the *man* instead of the crime, and then, acting as a clearing house, send him on to the institution best suited to his needs. This prophecy is already fulfilled in Ohio as far as juvenile offenders are concerned. In the appointment of a medico-psychologist as an officer of the Municipal Courts of Boston and Chicago, also, we find further illustrations of a similar division of labor.

This trend toward the reorganization of the social function of the courts will progressively increase the responsibility of the reformatory and make it more and more essential to find expert and broad minded educators to handle its changing population. Unless the reformatory can by all means increase its efficiency parallel with the growing burden placed upon it we may expect to find in the future a greater ratio of failures in the operation of the parole law than appear at present. The reply to the argument, sometimes heard, that a given wave of crime can be laid to the parole law should be, first to look for the facts, and secondly to tone up the reformatory and the penal institutions of the state.

But from the statistics supplied in this report from New York it would be rash to infer that any appreciable volume of crime is traceable to paroled prisoners from Elmira. During the year 1909-1910 there were paroled from that institution 1,035 prisoners. Eight per cent of these violated their first parole. Twenty per cent of these failures proved satisfactory on subsequent paroles. But such violations may consist merely in such technical lapses, as leaving the state, frequenting saloons, associating with evil companions, etc. Furthermore, from the date of parole until the issuance of this report only two-tenths of one per cent have ever faced a new criminal charge. The knowledge of this fact is made possible by the filing of all identification material obtained from prisoners within the state with the bureau of identification at Albany through which prompt information is obtained of the arrest of former New York reformatory men wherever it may occur. Certainly this is a record that prompts the confidence of thoughtful men in the reformatory method.

All this stimulates an inquiry concerning the reasons for breaking the conditions of parole. In this same report Dr. Frank L. Christian, assistant superintendent at Elmira, sets forth the results of a study of one hundred consecutive parole violations. Thirty-seven of these cases, he thinks, are directly traceable to mental deficiency; as to what particular form of deficiency he expresses no opinion.

Eighty-six members of this group received instruction in the trades during their reformatory terms. Of this number, but twenty-nine worked at their trades while on parole, and of these only seven were unable to hold their positions on account of lack of experience. Lack of ability and concentration of effort and purpose alone seemed to prevent others from working at their trades also. Elsewhere in this report it is shown that these paroled prisoners suffered no lack of opportunity to work steadily at some honest occupation. But of these one hundred violators of parole only twenty-six held but one job while on parole; for how long, we are not informed. Of the remainder, twenty-seven changed once or several times because they did not like their work; fifteen, because of low wages; eleven, because the work was too hard; six because of laziness; eight, in response to the "hobo" instinct; one, because he was not allowed to smoke during working hours, etc. All this suggests instability of character; lack of that best part of all habits—the habit of work—as the largest factor in determining occupational shiftiness. It is worth noticing that of these one hundred cases, sixty-one, during their parole, enjoyed the aid of a home with parents or other relations which probably to some extent relieved them of the strain of life and placed them in a situation in which reasonably well established habits of industry should have gone a long way toward effecting social adjustment.

No doubt, excepting in the case of pronounced mental deficiency, we have here only proximate causes of parole violation. But even so, they emphasize the direction in which our social needs are located: the early diagnosis and segregation of hopeless persons, and the training of the remainder in habits of industry. The latter is not to be accomplished by one means alone. There is no room in our generation for blind tradition in education. While we keep our eyes open toward the less conventional agencies and adapt them from time to time we must suffer no relaxation at any point along the line.

ROBERT H. GAULT.

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## CLINICAL CRIMINOLOGY.

One of the interesting developments of these years is to be found in prison and reformatory schools. From time to time in this JOURNAL we have taken notice of institutions of this character—their courses of study, methods, etc. In the present issue we publish an article by Mr. A. C. Hill, author of a pamphlet on "Prison Schools," published recently as a bulletin from the National Bureau of Education. Other articles setting forth results of specific research in this special educa-

tional activity have been arranged for. We drew attention in our last November issue to the organization of a section for the clinical study of criminology in the American Prison Association. In the development of the laboratory idea in the Municipal Courts of Boston and Chicago, and no doubt, in divers other ways within a year past substantial forward steps have been taken in the direction of developing and utilizing that portion of the scientific basis of criminology already laid.

American universities will not be slow in taking up the promotion of knowledge within this field, and the training of those who are to do the practical work will go on apace. Northwestern University offers a three hour semestral course in which the subject is approached from the psychological angle. New York University presents such a course during the summer session, and from the medico-psychological side it has been set forth during the last two summer sessions at Harvard. The University of Pennsylvania Bulletin for February, 1914, announces "Training Courses in Experimental, Educational and Social Psychology for (among others) Social Workers in Clinical Criminology." This work is under the direction of Dr. Lightner Witmer, professor of psychology, and director of the psychological clinic at that university. Professor Witmer, throughout practically all of his professional career, has been contributing to our knowledge of mental subnormality and incidentally of delinquency. His graduate students, now and then, have aimed primarily at the study of delinquency under his direction. It is, therefore, no new step of Professor Witmer's when he makes the following announcement, in the bulletin referred to, of summer school opportunities at the University of Pennsylvania:

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> "The equipment of juvenile courts with probation departments which are practically social service departments, and the demand which is being made by reform schools, even by reformatories and penitentiaries, for competently trained research workers, open up new fields for social work, in what may be called clinical criminology. This work requires a scientific analysis of the personality and conduct of adolescents and adults. The initial difficulties of the psychological analysis involved in such investigations render absolutely indispensable a thoroughgoing training in the principles and methods of modern psychology. A training course for social workers directed to moral causes, especially to juvenile delinquents, offers exceptional opportunity for training this type of social

worker. The career of social workers in criminal psychology will be found as probation officers in connection with juvenile courts, as probationary visitors where the suspended sentence or the indeterminate sentence is a feature of criminal procedure, or as resident researchers in reform schools and reformatories. Many of these institutions are beginning to add to their staff assistants who have been trained along psychological lines."

ROBERT H. GAULT.

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## STERILIZATION AND CRIMINAL HEREDITY.

The question of sterilization has been up for discussion repeatedly in the pages of this JOURNAL within the last year. But so far every writer has limited himself to the operation as mere punishment for deterrence or as a maens for preventing criminal heredity. They have been justified perhaps in so limiting themselves; for with such books as Davenport's Heredity in Relation to Eugenics and Kellicott's Social Direction of Human Evolution, and with such decisions as occurred in the Washington case, and with such blatant legislation as the sterilization act in New Jersey or the bill introduced at the last Illinois legislature, the impression has gone out that direct inheritance of criminality has been *proved* (see the preambles to practically all the sterilization laws so far passed). The critics of such legislation are right in asserting that criminal inheritance remains yet to be proved. They may be wrong, however, in going on to conclude that sterilization is a "cruel and unusual punishment" and of no practical utility. It might conceivably be of considerable value as a preventive measure from the standpoint of reducing irritability, on the analogy of circumcision (proved by Warden Johnson's experiments at Folsom prison). And it is surely within the rights of the state to prevent habitual criminals, insane criminals and defective delinquents from procreating children at all, since they are manifestly unfit for rearing them. It is not germs of criminality we ought to fear, but lack of constructive parental capacity. It would be well if future discussions kept this aspect of the problem clearly in view.

ARTHUR J. TODD.

# COMMENT ON PROPOSED LEGISLATION IN NEW YORK.[1]

EDWARD SWANN.[2]

The need of the simplification of court procedure in the trial of criminal causes to comply with present day conditions is demanded from so many sources that a series of bills, with that desired end in view, has been introduced into the New York state senate by Senator James D. McClelland, and in the assembly by Assemblyman James J. Walker.

There is not an untried field in any one of these bills, for each bill conforms either to the law in England or the English possessions, the United States statutes, or to the law in one or more of the states of the Union; and one bill, amending the rule of evidence, is to crystallize the law into the form of a statute, although it may be merely declaratory of what the law at present is, but it would prevent one rule of evidence being approved in one judicial district and disapproved, as not the law, in another department. Under the present system of selecting a jury in the trial of an important criminal case, one week to obtain a jury is approximately the minimum time that is usually consumed, and frequently a month is consumed in getting a jury unless the trial jury is known as what is a special jury. In case a common juror is challenged, the questions raised by the challenge have to be tried out by the court and evidence taken, and if, on this collateral matter, the trial court should make a technical error in the allowance or rejection of evidence as to the qualification of a common juror, it would be cause for reversal of the judgment, although there may be no errors whatever in the trial of the defendant himself for the crime for which he was indicted. There are the occasions when knockout questions are endeavored to be administered, and responsible representative citizens seek to avoid jury service on account of the punishment endured by them in the protracted confinement while the jury in an important case is being obtained.

In Massachusetts and New Jersey our practice would not be tolerated. In Massachusetts it is said that in the trial of the Lizzie Borden case, for the alleged murder of her mother, the jury was selected and sworn in less than a day.

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[1]The bills referred to are published in full in the Department of Notes, this issue.

[2]Judge of the Court of General Sessions, New York City.

To correct this abuse, Assembly Bill No. 16 is to abolish exceptions to rulings upon the examinations, allowance or rejection of common jurors in criminal cases, applying the same rule to the usual petit jury as is now provided for special juries.

The proposed bill for the simplification of the form of the indictment will be best expressed in the words of the proposed statute.

> "No indictment shall be insufficient if it contain the title of the action, specifying the court to which the indictment is presented, the names of the parties, and in substance a statement that the defendant at a specified time and place has committed some indictable offense therein specified, which statement may be in popular language, without any technical averments or any allegation of matter not essential to be proved. Such statement may be in words of the enactment describing the offense or declaraing the matter charged to be an indictable offense or in any words sufficient to give the defendant notice of the offense with which he is charged.
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> 2. Any indictment or count may refer to any section or subsection of any statute creating the offense charged therein, and in determining the sufficiency of such indictment or count the court shall have regard to such reference."

This is substantially in conformity with the Canadian Criminal Code, and other English speaking countries, and has been found to work very much better than the present provisions of our Code of Criminal Procedure, which perpetuates much of the artificial and technical in regard to the form of the indictment, or at least it has been so construed by the Court of Appeals.

It is not intended in the proposed simplified form of the indictment to give any less information to the defendant than is now required to be given under the present form of indictment, but it is to abolish the necessity of multiplying prolix legal phrases characterizing it in the usual tautological manner, which merely adds words without additional matter. The simplified form is to abolish useless verbiage without diminishing the necessary matter.

The object of an indictment is to give exact and responsible notice to the defendant of the time, place and nature of the offense of which he stands charged, and the court in which he is to be tried. The court has the same power to order a bill of particulars in a criminal case that it has in a civil case, and a defendant who needs any additional facts (but

not the evidence of facts) may have the indictment supplemented by a bill of particulars.

Another bill intending to amend the law with reference to indictments reads as follows:

> "Section 278. Charges which may be joined in one indictment. When there are several charges against any person for the same act or transaction, or for two or more acts or transactions connected together, or for two or more acts or transactions of the same class of crimes or offenses, the whole may be joined in one indictment in separate counts; and if two or more indictments are found in such cases, the court may order them to be consolidated."

This is a substantial copy of the Revised Statutes of the United States, Section 1024, which has worked well in the Federal courts since 1853, and is one of the reasons that makes the federal courts more effective in dealing with criminals. In the Williams case in California, 168 U. S. Rep., 390, Williams was a United States inspector and grafted upon Chinamen coming into this country; not only one act of graft was charged in the indictment, but several similar acts from various incoming Chinamen were alleged and proved, and the form of the indictment was upheld by the Supreme Court of the United States. If this form of indictment was adopted in this state it would contribute more than any one other thing to "smashing the police system." Under the present procedure, although the prosecution may have evidence of the collection of police protection money from many sources, only one specific instance may be alleged in the indictment, and under the unwritten rules of the "system," a cast-iron alibi will be proven at the trial, whereas, if repeated acts of graft were alleged and proven, even the ready alibi could not be stretched to cover each specific instance.

Syndicated crime cannot be met and coped with adequately under the old methods—our laws and procedure were framed for sporadic cases and the judicial machinery breaks down and refuses to perform its functions in the face of the organization and system of evil doers, who are well advised in advance of how to conduct an operation with the least chance of conviction.

This provision would meet and cope with the difficulty of convicting the arson gangs who committed great numbers of acts of arson, with the same general agreement or combination to insure, burn and collect the insurance, as was testified to by Izzie Stein in the Freedman-Grutz case.

A correlated bill is one that seeks to amend the laws of evidence,

and is intended to meet just such cases as has just been referred to, and reads as follows:

> "In any criminal case where the act with which the defendant is charged is one of a series of acts committed in pursuance of a general scheme, plan or system, any like acts of the defendant which were committed in pursuance of such general scheme, plan or system, may be proved, whether they are contemporaneous with or prior or subsequent thereto."

This act would enable the court to receive testimony of the various acts of arson committed by Izzie Stein, Grutz, Freedman and Goldman, in pursuance of the general agreement, scheme and plan entered into between them to fire a building and collect insurance money; it would meet and cope with the horse poisoning bands; it would make too precarious the collection of protection money by the police, and the recent conviction of Police Sergeant Duffy for collecting protection money from various regular sources would have been affirmed by the appellate division of this department without a divided court. Judge Scott, who dissented from the majority opinion, did so for the express reason that the present rules of evidence would not permit "evidence of the taking of money from persons other than Roth, who alone was named in the indictment as the person who bribed the defendant." In some of the other departments the majority opinion in such cases upholds Judge Scott's view of the present rule of evidence.

Another bill provides that accomplices in the same transaction, who were jointly indicted, may be tried separately or jointly, in the discretion of the court.

The present rule is that in case of misdemeanor where accomplices are jointly indicted they may be tried separately or jointly in the discretion of the court, but in the case of felony, "any defendant requiring it must be tried separately," leaving no discretion to the court, and not making it necessary for a co-defendant to give any reason why he demands a separate trial. The discretion of the trial court in refusing a separate trial would be reviewable by the appellate division, so that in case any error was made that would be prejudicial to the defendant, he would have his remedy in appeal. As the law now stands seven gangsters, who are arrested and indicted for participation in the same assault, all of them being accomplices to the same act, may each demand a separate trial, without assigning any reason for it. The real reason for such a demand, which is never expressed, is that the city prison is full of prisoners awaiting their turn for trial, and if each of

the seven gangsters demands a separate trial it will take probably one month to try a case, which would not otherwise consume more than three or four days at the extreme, and the result is that the gangster has prepared an excellent foundation for suggesting a minor plea, or give the court the alternative of consuming a month's time unnecessarily, and thereby increasing the number of prisoners awaiting trial in the city prison. The consummation devoutly to be wished is that the criminal laws shall be administered with fairness, certainty and dispatch. An enlightened justice demands a fair, speedy and certain trial under practical and workable rules, but this end may be attained without putting a legal sandbag into the hands of gangsters, which they may use in endeavoring to force the court to accept a minor plea, on the pain of extending the duration of the trial three or four times its length, thereby adding additional cost to the county, wearing out citizens who must be witnesses and often causing them to lose their positions, and keeping other prisoners additional time in the city prison awaiting their turn for trial.

The proposed amendment conforms the law of New York with the federal practice and the English practice.

The rights of the defendant in a criminal case are protected by barriers which are set up between him and the prosecutor, viz:

1. He starts with the presumption of innocence in his favor established by express statute, and the court holds that this presumption is a continuing one and remains with him until the end of the whole case. The defendant does not have to prove his innocence. No duty or obligation with reference to the case ever devolves on him.

2. The burden of proof is upon the prosecution and never shifts to the defendant, and the prosecution must sustain that burden through the case.

3. The prosecution must prove the defendant guilty beyond a reasonable doubt, "and in case of a reasonable doubt the defendant must be acquitted."

4. The defendant may set up affirmative defenses, such as justification, self defense, insanity, etc., and the prosecution must disprove it and bear the burden of the proof.

5. The defendant is entitled to object and except in case any ruling of the court is against him, and the prosecution has no exception.

6. The defendant has the right of appeal from a final judgment of conviction, but the prosecution has not.

7. The defendant goes to trial with exact knowledge of what the

charge is against him, but he does not have to disclose his defense until after the prosecution has put in its case, so that when the prosecutor presents his evidence in chief he may have to be wholly ignorant of what position the defendant really takes with reference to the charge against him; the defendant may await the introduction of all the evidence against him and may choose his defense thereafter to suit what he may consider to be the best chances of success, such as self-defense, insanity, an alibi, etc.