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REFORM OF THE JURY SYSTEM IN EUROPEAN COUNTRIES: ENGLAND

FRANCOIS GORPHE¹

The problem of the jury has now for some time past been confronting us. We must admit that this institution of popular justice, as it functions today, has not received adequate public discussion. Opinion is divided between preserving and abolishing it wholly; but all insist upon its reform. To put an end to the scandal of excessively indulgent verdicts, and to remove what has been called "the crisis of the jury," seems to be a necessity. This presents a problem of capital importance for the administration of justice and the suppression of crime.

The appeal to sentiment cannot solve this problem. Here as elsewhere the debate is liable to prolong itself indefinitely, unless we seek to avail ourselves of the lessons of experience, that great teacher, implacable but trustworthy. It is the experience of various countries, acquired sometimes at a high cost, that will show us what alterations have been made and what remedies or reforms will be effective. We can profit from these lessons by adapting their warnings to our own habits of mind and institutions.

I. *The Situation as a Whole; Its Evolution*

No judiciary institution has varied more than this one, which provides for the direct participation of the citizenship in the processes of justice. It has been closely related to the particular governmental systems. To understand its evolution and its changes we must therefore not lose sight of its origin and its essential nature.

Born out of the struggles of the English people against royal despotism, the jury was borrowed by the French Revolution as a democratic institution. But it was grafted artificially, and only in part (in criminal cases), upon a judiciary system that was quite

¹ Judge of the Court of Appeal at Poitiers, France; former Prosecuting Officer; author of "La Critique du Temoignage" (1927).

The article appeared in the "Revue internationale de droit pénal" (1935, XII, No. 4, p. 370), and by the author's consent was translated for the JOURNAL by John H. Wigmore. Some passages describing the English procedure, familiar to American readers, have been condensed, and the order of topics slightly altered.

In two subsequent articles the author will describe the reforms in other European countries, and will then summarize his conclusions.

different and wholly unadapted to its operation. Then, during the 19th century (first because of the Napoleonic conquests and the spread of the French codes, later under the influence of the Revolution of '48) the criminal jury, with various modifications, was adopted in numerous European legal systems. In Belgium and Luxembourg the French codes were adopted as a whole. In the other countries the jury-institution was installed at various periods of the 19th century—first in most of the local governments of Germany, Italy, and Switzerland; then in Austria and Greece (1848), in the Italian kingdom (1860), in Russia and Rumania (1864), in Spain (1872), in the German Empire (1877). At first it was applicable in some countries for seditious libels only—in Hungary (1848), Sweden (1888), Argentina; and remained thus limited. In the Scandinavian countries, it found no congenial reception; Denmark after an unsatisfactory trial (1849-1879), retained it for capital offenses only. Into Holland it never entered, though for a brief time under Napoleonic rule it was a part of the law. And in other countries it has maintained itself only by being restricted to the most serious offenses (Belgium, 1867; Germany, 1877; Austria, 1877-1934) or to cases where the accused demands it (Scotland; Channel Islands since 1846), or by becoming transformed into a part of the judiciary (Bulgaria, Portugal, some Swiss cantons). Several of these countries, to be sure (Scotland, Channel Islands, Portugal) have been influenced by the English model.

The Assessor-System. A word of explanation must here be offered about the assessor-courts, to which frequent reference will be made.

The assessor-court is a type by itself, and must not be confused (as it sometimes is) with the reformed jury where the jurors sit with the judges. The juror is a citizen chosen by lot from session to session. The assessor is a citizen appointed and holding office for a specified term.

In its modern form the assessor-court is comparatively recent. It came into vogue in the 1800s, and was usually employed for minor offenses only. Its chief region was the Scandinavian and Germanic countries, particularly the Swiss cantons and German provinces—earliest in Hanover, Bremen, the Hesse (electorate), Baden; then in Prussia (1867), Wurtemberg (1868), Saxony (1868), and Hamburg (1869).

But to regard it as a modern institution would be a mistake. Its history goes back to the very beginnings of municipal inde-

pendence. In the Free Cities of the Middle Ages, the assessors ("schoeffen") had both administrative and judicial powers—as in other forms of government, at a period when the separation of powers had not fully developed. In France the assessors are found ("échevins," Lat. "scabini") all the way along from Charlemagne to the Revolution of 1789. They were a sort of permanent lay-magistrates, replacing the "bons hommes," "prud'hommes," or "rachimbourgs" of the Merovingian epoch. Under Charlemagne they were appointed by royal authority. Under the feudal system they survived only in the cities (especially in the north and center) where they took cognizance of minor litigation. An edict of 1704 created 2 perpetual assessors in every city, except Paris and Lyon, where the old method of election prevailed. The law of Dec. 14, 1789, reorganizing the municipalities, abolished the assessors. Thus we perceive that the assessorate was embodied in the old traditions of France, while the jury was still unknown.

Distribution of Jury-Courts, Assessor-Courts, and Judge-Courts. The jury-system, after its first popularity, and in spite of its being a fairly recent importation in continental Europe, soon was subjected, almost everywhere, to reforms which modified its operation in more or less important features. To understand this evolution, we must glance comparatively at its features as a whole at the opening of the 20th century. A chart, simplifying the different systems under a few general categories, shows them as follows:

CHART OF JURY-SYSTEM VARIETIES, A.D. 1900²

| | | |
|---------------------------|---------------------------------------|---|
| | 1. English Jury System | England, United States |
| | 2. Diluted English System | Scotland, Ireland, Channel Island |
| I. <i>The Jury Proper</i> | 3. French Jury System | Greece, Rumania (1886), <i>Spain</i> (1882, 1888), Swiss Cantons (Vaud, Zurich, Berne) |
| | 4. Limited French Jury System | Belgium (1867), <i>Russia</i> (1864), <i>Austria</i> (1873), <i>Germany</i> (1877), Norway (1887), Hungary (1869, 1897) |
| | 5. Jury Instructed by the Chief Judge | <i>Serbia</i> (1865, 1892), <i>Geneva</i> (1904), <i>Italy</i> |

² Countries marked by italics have changed their system.

| | |
|---|--|
| 6. Jury sitting with the Judge for penalty | Geneva (1884), French Possessions, Etc. |
| 7. Jury sitting with the Judge throughout | Portugal, Bulgaria, Tes- sin (1895) |
| II. <i>The Assessor System</i> | Swiss Cantons (13 of 22) French Possessions, Monaco Sweden and Finland (ex- cept seditious libel) |
| III. <i>The Judge System</i> (neither jurors nor assessors) | Holland (1813), Luxem- bourg (1814) Denmark (except capital offenses) Argentina (except sedi- tious libel) Egypt (1904), Turkey (1879) Japan (1880) |

But the state of things shown on this chart has suffered numerous changes in the last quarter of a century.

1. The English and American system has made slight changes, while preserving its essential character.

2. The original French system, even its limited form, has been gradually abandoned. In Spain it has been reformed, and in Berne (1928), Germany (1924), and Austria (1933,1934) has been radically transformed. In Austria, indeed, the assessor-system has entirely replaced the jury; and the Soviet revolution acted similarly in Russia.³

3. The new State of Yugoslavia (embracing regions formerly under the Serbian and the Austrian systems) has completely repudiated the jury in its 1929 Code of Penal Procedure; there are now only judges. Italy had used a system like the Serbian; but

³ Luxembourg, though keeping the French Codes, abolished the jury in 1814. Only in name there survives a jury-court ("cour d'assises"), so-called doubtless because it sits only at times and its six members (three superior and three inferior judges) are appointed for only three months by the superior court. Sweden, though preserving its old system, has separate rural tribunals (a judge and 12 jurors) and city-tribunals (a burgomaster and 2 assessors), preserving however the jury-proper for press offenses.

In Finland a similar distinction obtains between rural tribunals (a judge and 5 assessors) and city-tribunals (a burgomaster and 3 assessors).

In Switzerland there are several varieties of the assessor-system among the 13 cantons above noted in the chart; in most of them (e. g., Lucerne) the assessors are citizens who sit with the judges.

the Fascist government has now substituted the assessor-system, perhaps as a transitional form to the ordinary judge-tribunal.

4. The modern assessor-system has held its own and gained ground; no country has abandoned it, and Austria and the Russian Republic have adopted it; the new Germany perhaps will do the same.

5. The ordinary judge-tribunal, composed of [three] professional judges only, has won in several countries—Yugoslavia (1929), and the Baltic States (Latvia, Esthonia, Lithuania) since the war, though these last countries have in other respects preserved their pre-war Russian laws.

So the existing systems can be charted as follows:

CHART OF JURY-SYSTEM VARIETIES, A.D. 1930

I. THE JURY PROPER

| Jurisdiction | Jury for Guilt Only | | Jury for Guilt and for Penalty | | |
|----------------------------|--|--------------------------------|---|--|--|
| | Jury meeting entirely alone | Jury instructed by Chief Judge | Jury meeting alone for guilt, and with judges for penalty | Jury instructed by Chief Judge for guilt and meeting with judges for penalty | Jury a part of the court and reduced in number |
| All Criminal Offenses | Rumania, Mexico, Argentina, Brazil, Sweden (rural) | | France | | Tessin (8) |
| Limited Number of Offenses | Spain, Norway, Greece, Japan | Poland | Belgium | Hungary, Czechoslovakia | Germany (6) |
| Optional for the Accused | England, Scotland, Ireland, United States (some States) Vaud, Zurich, Japan, Denmark | | United States (some States, but always alone) | Geneva | Berne (9) |
| Exceptional Criminal Cases | Chile, Peru, Sweden (cities) | | | | |

II. THE ASSESSOR-SYSTEM

Switzerland (13 cantons). Sweden (cities). Finland. Russian Republic (1917). Austria (1934). Italy (1931).

III. THE ORDINARY JUDGE-COURT

Holland (1813). Luxembourg (1814). Portugal (1926). Turkey. Bulgaria (1922). Baltic States. Yugoslavia (1929). Egypt. Monaco.

To comprehend fully the extent of these changes of form in the institution, one must keep in mind that the limitation of jurisdiction causes few cases to be referred to jury-courts.

A comparison of the above two charts will show the importance and the scope of the recent changes (the countries making important changes are printed in italics in the first chart). Before considering the particular countries, we may note the following principal features of change:

1. In England and in North America the changes have been perceptible, but without fundamental alterations.

2. The original French system, even in its amended form, has been more and more discarded. In Spain it has been reorganized. In Germany and in the Swiss canton Berne, it has been transformed into an assessor-system. It no longer exists in the new States—Czechoslovakia, Baltic States, Yugoslavia, Russian Republic. It has been discarded in Bulgaria, Portugal, Italy, Austria, and (virtually) in Hungary. Two States, to be sure—Denmark and Japan—have adopted the original jury-system, but only as optional for the accused; and the Japanese are said to use it very little.⁴

3. On the other hand, the assessor-system (less complex and more modern) has gained several countries—Russian Republic, Italy, and Austria; in Germany, for misdemeanors and probably soon for all offenses.

4. But the ordinary judge-tribunal, with neither jurors nor assessors, is the one that has gained most ground. It has replaced the jury in Bulgaria, Portugal, and the three Baltic States; also virtually in Hungary, where jury-trials have been suspended.

5. In France, the reforms of detail have been but slight. Since 1881, the presiding judge no longer gives that final charge or summing-up (Art. 336) which was thought to be too influential with the jurors. Consequently the jurors, left entirely to their own ideas, receive nothing in the way of useful explanations. Their only privilege is to request the presiding judge to come to the jury room

⁴ [The jury-law in Japan did not go into effect until October, 1928. It provided automatically for the jury in capital and life-sentence cases; in other major crimes, request of the accused only. In the first two months of operation there were 308 juries of the first sort, and only 6 of the second sort (Judge Masataro Miyake, "An Outline of the Japanese Judiciary," 1930). Later figures are not at hand.—TRANSL.]

to answer some specific question, *e. g.*, as to the penalty applicable; the judge must in that case be accompanied by the defense counsel, the prosecutor, and the clerk. But this limited expedient proved unsatisfactory as a palliative to their need of help; so, after many proposals had been discussed, the law finally allowed the jurors to deliberate with the Court as to the penalty applicable and the excuses legally allowable (Act of March 5, 1932), following the Belgian practice since 1919. This partial change is regarded with satisfaction as a step towards a complete union of the Court with the jury, and good results are already apparent.

The French legislature has been held back from more radical changes by the conservative attitude of the Bar, who fear the influence of the judges upon the juries, as if that influence would be unhealthy for justice. Hence France has not yet joined in the general movement to simplify and make flexible the jury-system and to limit its jurisdiction to serious crimes and seditious publications, while at the same time to provide a closer cooperation between judge and jury, even by constituting them into a single bench.

But in the French colonies and protectorates, where changes can be made by administrative order, the criminal tribunal has been reorganized (where practicable) on the model of an assessorate—in Madagascar, Tunis, Indo-China, Morocco, and elsewhere. For example, in Indo-China offenses by French citizens are tried before a Court composed of three appellate judges and four citizen-assessors, who give a joint verdict on all issues and on the penalty; though the judges rule on all points of law and procedure as they arise. So too in French West Africa. In Lebanon and Syria (under League mandate), there are no assessors, except for offenses involving public safety or religious disputes.

We now proceed to examine more in detail the changes in the European countries, to ascertain their reasons and their effects.⁵

II. *The English System; Its Progressive Improvement*

To begin with England is logical, for in that country it originated⁶ and from that country it spread eastward to Europe via France, and westward to America. But in England the jury preserved distinctive traits which make comparison difficult. With this,

⁵ The comments that follow are based largely upon observations made on the spot, in the course of numerous visits to the neighboring countries (Germany, Austria, England, Italy, Switzerland, Belgium, Holland). For the most courteous treatment everywhere accorded, the author records his sincere thanks.

⁶ The germs of the institution, to be sure, were imported from Normandy.

as with other English institutions, names and forms of things tend to hide a nature different from the same names and forms on the Continent; and thus a different functioning will not surprise us. As has been judiciously observed,⁷ "Few persons, quite possibly, of those who introduced the British jury on the Continent were fully aware of the precise role played in Great Britain by that historic and typical institution." They could imitate the general principle, and up to a certain point the mechanism also, but they could not adopt the spirit; for that depends on the people and their customs of thought, and requires an atmosphere of identical physical, social, and political conditions.

In England the jury is an integral part of an entire judiciary system, into which it fitted naturally, by a slow evolution. It is thus adapted to the needs of justice and fits into the whole procedural system. But by contrast, when artificially and suddenly intruded into the Continental system, by a stroke of the legislative pen, it could only function with jerks and "mis-fires" and frequent vacillations. Ferri, who attacked it without gloves, called it "a caricature" of the English institution, a mere artificial graft of alien elements onto the social body, having no physiological relation to the whole.⁸

This deep-seated national difference is seen in the changes that have been made during the past century. In England⁹ these changes

⁷ H. G. J. Maas-Geesteranus, "Considérations sur la crise du Jury" (Paris, Sirey, 1930, p. 9).

⁸ "Sociologie criminelle," 1904, p. 541.

⁹ The present English use of the jury (in criminal cases) may be summarized as follows:

(1) Assize-Courts; ambulatory tribunals, sitting several times a year in the different counties and important cities, presided over by a judge of the High Court, or by a Commissioner (usually a king's counsel); they form the most important trial court, and may try any indictable offense.

(2) Central Criminal Court; sitting in London (Old Bailey) every month; presided over by a judge of the High Court, or by a City judge, or by a Recorder or Common Serjeant; several branches sitting simultaneously, and having jurisdiction over the entire metropolitan area (6,000,000 inhabitants). It deals only with criminal cases, and may be deemed the largest criminal court in the world.

(3) The Quarter Sessions Courts; sitting every quarter in all the counties and in the boroughs (privileged cities); presided over in the cities by a Recorder (a lawyer, and paid). This difference of personnel detracts from the prestige of the county courts, and their judgments are more often revised on appeal.

The Quarter Sessions Courts have concurrent jurisdiction with the Assize Courts for all indictable offenses, except (a) felonies punishable by death or by life imprisonment (except night-burglary), and (2) certain crimes such as forgery, etc., which may raise difficult legal questions.

(4) The remaining Courts sit without a jury. The King's Bench Division of the High Court preserves the ancient right to deal with certain cases, with or without a jury. The Petty Sessional Courts, a sort of justice of the peace or police court, held by "gentlemen" only, sit in all localities at frequent inter-

represent progressive modification by a natural evolution; but on the Continent they represent reforms applied more or less forcibly and have thus had variable success. For example, in England, when the uselessness of the grand jury had long been conceded, the institution disappeared quietly, and this important reform took place almost unnoticed by the public. By contrast, on the Continent during the past century change after change has been made in the system; for example, in Austria and in Spain the jury was at one time discarded, or suspended, at another time restored.

A visit to an English criminal court suffices to demonstrate to the observer that the jury there functions, not only with a different procedure, but also in a different spirit from our own in France. The serene judicial atmosphere is noticeable; it reveals (as George London termed it in a recent article) "the calm visage of England." Before the twelve impassive jurors and the imposing figure of the judge proceeds in due order the counsel's opening statements of the case, the production of the evidence, the testimony of the witnesses and the accused, the examination and cross-examination by skilful advocates for the Crown and for the accused. The character of the accused is treated with reserve; his past is not raked up; the background of the offense is not exploited; simply the facts and evidence of the crime are presented, as disclosed by the witnesses. The juries are told to consider nothing else. The judge enjoins them to decide simply whether this accused man, personally unknown to them, has in fact done the precise act charged against him. For this purpose, he binds them by no technical, obscure, and complex distinctions, which (with us) aim vainly to separate law from fact but which mean nothing to the multitude. Instead, the issues of facts are the main subject, not only of the advocates' arguments, but also of the judge's final summing-up. This summing-up is extremely important. At the close of the evidence and arguments, the judge rehearses to the jury the whole case, as objectively as possible. He re-states the points made by both the prosecution and the defense; pointing out those which deserve special attention and noting the places of difficulty or doubt. For this purpose, he does not hesitate to offer comments, even advice, on the weight of the evidence. They are thus given as much help and guidance as possible, almost as much as if they were presided over¹⁰ (as in the French method) by the judge, but with this difference that it all

vals; they pass judgment on misdemeanors, and they examine and bind over for trial all indictable offenses (i. e., requiring a jury trial).

¹⁰ ["Dirigés."—TRANSL.]

takes place in public audience, and not in the privacy of the jury-room.

The jury is now ready to deliberate. And in simple cases they ordinarily do so then and there in the jury-box, without taking the trouble to retire. But they are bound by strict limitations. In the first place, to avoid a dubitable decision, their verdict must be unanimous; otherwise the case is tried again with another jury. Furthermore, to assure impartiality and exclude external influences, they are kept shut up (theoretically) until they come to an agreement; but this ancient rule, now relaxed from its former strictness, is enforced (since 1897) only for the most serious offenses.¹¹

Only after verdict of guilty rendered is the accused's character considered, as revealed by the police records, for the purpose of determining sentence. The prohibition against evidencing it during the trial of the charge is so strict that the merest allusion to it suffices to set aside the judgment.¹² Thus a main purpose, as contrasted with the Continental system, is to prevent the jury from being influenced by the accused's character or antecedents. Such matters bear upon the penalty only, if the accused is guilty of the fact charged. And the judge alone determines the penalty, independently of any recommendations to leniency which the jury sometimes offers.

So, to summarize the principal distinctive features of the English system:

1. The evidence is all given from the witness-stand,¹³ and is elicited by the advocates, not by the judge, who reserves his comments for the jury. Thus each of these personages plays a role quite different from the corresponding one on the Continent. Though the prosecution is in the name of the Crown, the prosecuting advocate is a counsel engaged for that case, not the permanent Attorney-General or his deputy, as in France, and the trial appears more like a civil trial with jury. The accused is entitled to remain

¹¹ Herman Cohen, "The Spirit of Our Laws" (2d ed. 1922, p. 285).

In the coroner's jury, and the jury of committal for lunacy, a majority-verdict suffices. In Scotland also, where the jury has 15 members, a majority-verdict suffices. In India, the superior court jury has 9 members, and a majority-verdict is valid, if approved by the judge.

¹² A typical instance occurred at a Quarter Sessions Court. The accused, a repeater, was recognized by the judge, who had formerly sentenced him. The judge said, "You have already been before me." For this remark, disclosing to the jurors the former offense, the judgment was set aside.—So also an incident related in Mr. Cohen's book, p. 304 (cited above).

¹³ [Without, as in France, reading the report of the examining magistrate, the depositions of certain witnesses, etc.]

silent, or to take the stand in his own behalf, as he may prefer. The witnesses are examined by the counsel, under supervision of the judge. And their testimony is what makes out the case; for there is no report of an examining magistrate.

2. The jury's function is restricted to the issue of guilty of the precise act charged; they know nothing of the accused's prior record—except so far as the accused may voluntarily adduce his good character to evidence his innocence.

3. The jury functions only on a plea of Not Guilty. If he pleads Guilty, the judge alone then disposes of the case—and very promptly. If he pleads, Not Guilty, he always is tried by a jury. In serious offenses, the accused is shown consideration, for the judge not only notifies him that he may choose his plea, but may even advise him to plead Not Guilty, or at any rate to take advice of counsel as to his plea.¹⁴

The jury has more flexibility and directness in its verdict. It is not limited to answering "yes" or "no" to questions technically framed and difficult to understand. It simply declares that the accused is guilty or not guilty of the charges as framed by the judge; and, by some modern statutes, it may even refuse to recognize the offense named in the indictment.

Thus the jury's deliberations are not confused, as with us, by a multiplicity of technical issues—the main charge, the aggravating circumstances, the extenuating circumstances, etc., etc. French jurors, as M. Toulemon has truly remarked,¹⁵ lost amidst a maze of interrogation marks, are like a company of explorers entangled in an unknown forest, surrounded by ambushes, and obliged to hew their way out by main force." In England this drawback is avoided. Judge and jury do not appear as two distinct bodies, but as a single body dividing their task between them, and without any sharp distinction between fact and law entering to complicate the distinction between guilt and penalty. Nor has any need been felt, as on the continent, to strengthen the collaboration of the two branches of the tribunal; for the spirit is already there of performing a common task. In France, for example, the summing up of the presiding judge (Art. 336) had to be abolished in 1881, because it tended too often to be partial against the accused; while in

¹⁴ Statistics show that about one-half of the persons indicted plead guilty, and that about two-thirds of the others are found guilty.

¹⁵ Andre Toulemon, "La Question du Jury" (1930, p. 129). In Tolstoi's "Resurrection" the innocent heroine is thus found guilty by a jury confused with these questions.

England the judge's summing up is made with the most scrupulous spirit of impartiality, and the juries are aware that the judge does not hesitate, if the case merits it, to indicate that the prosecution's case is weak. The summing-up is indeed a kingpin of the system, as a guaranty of just verdicts. A noted French member of our legislature has already pointed this out:¹⁶ "The English jury is not like ours. It has confidence in the judge's firm leadership through the maze of contradictory and doubtful evidence. It is both docile and independent—more docile than ours to the instructions of the judge (which indeed are in France no longer allowed), but more independent in its own sphere."

To the foregoing features of contrast must be added the jurors' English mentality—deliberate, full of respect for law and order and for social traditions—which impresses itself on this national institution and assures its steady functioning.

All this, then, must be kept in mind for understanding the English jury, and for distinguishing it from its (more or less superficially similar) counterparts in other countries—even in the United States of America, where English institutions are the basis of the law and inspire its forms. Unfortunately, imperfect and crude imitations in this as in other instances, tend to become caricatures, especially when not handled in the same spirit. The result is that in these other countries the jury has largely lost the authoritative status which it still preserves in England. This authority is, to be sure, based also on the deep respect which that people feels for its justice and on the pre-eminent authority of the English judges—an authority not equalled in any other country.

Changes. But even in England, where democracy and traditionalism are merged, institutions change; slowly, indeed, but progressively and surely. There is no old rule, however strict, that does not weaken with time—even the rule requiring unanimity for a verdict (which is found rather inconvenient), and the principle of the finality of the verdict on the facts (which shocks modern ideas). And so, there as elsewhere, reformative changes were hastened by the upsets of the World War, especially in the direction of abandoning useless and expensive features.

(1) In most civil cases (including commercial causes, for England has no commercial tribunals) the jury has fallen into disuse. In minor criminal cases it has been given up. It is required now only for indictable offenses, where the accused pleads not guilty.

¹⁶ A. Cruppi, "La Cour d'Assises," p. 53, and *Révue Pénitentiaire* 1899, p. 1176.

In the County Courts it is used only on demand of a party, and the number of jurors (since 1903) is reduced to 8; and even then the judge's consent is necessary in minor cases. In Police Courts and Petty Sessions, where only limited penalties can be imposed, the jury is not required; the accused may consent (and usually does) to be tried by the magistrate alone.

(2) In the matter of appeals, a new Court (in 1848) was established, for questions of law only, the Court for Crown Cases Reserved; but for many years it was little used—averaging only 8 cases a year. Recourse was always available to the House of Lords for errors appearing in the record; but the cases so appealed were few. There was no appeal for error of fact. The only recourse was to solicit a pardon from the Home Secretary; but this was unsatisfactory for the innocent; a pardon deals only with the penalty, not the guilt.

Before reform in this respect could come about, public opinion would have to be aroused by instances of failure of justice. This finally occurred in 1904, when it was discovered that a certain Adolph Beck, found guilty of fraud in 1896 and sentenced to 7 year's imprisonment, and then charged again in 1904 with a similar offense, had been the innocent victim of an erroneous verdict. Three years later, on recommendation of the judges themselves, was organized the Court of Criminal Appeal (St. 8 Edw. VII, c. 46, to take effect in 1908).

This Court marked a new era in English criminal justice. Composed of 3 to 5 judges of the King's Bench Division, it replaces in jurisdiction the Court of Crown Cases Reserved and the House of Lords, and entertains appeals from all courts except the petty sessions and trials of peers. The accused's right of appeal extends to any question of law. On questions of fact, or of mixed law and fact, the approval is necessary of either the trial judge or of the Appeals Court itself or a judge thereof. The revision may also extend to the penalty, except where the precise penalty is fixed by law. To prevent groundless appeals, the consent above mentioned is interposed; and the time elapsing between appeal and decision is not reckoned on the time of a prison-sentence.

This Court may revise the judgment as follows:

(1) On the issue of guilt, the Court may set aside the judgment, either for error of law or "failure of justice," or because the verdict is unreasonable or not supported by the evidence, and a judgment of an acquittal is then recorded.

(2) On the issue of the penalty, this Court may either reduce or increase the penalty. If it believes that the act done was due to mental derangement, it may set aside the judgment and direct that the party be committed as insane.

The number of revisions ordered shows the need for this appellate tribunal.¹⁷ The need exists not only for remedying errors of justice but also for making the practice uniform; which is feasible, since this is the only court of criminal appeal for the entire country. It is of course neither feasible nor desirable to standardize everything in criminal justice; but the result is that the trial Courts, to avoid having their judgments set aside on appeal, do endeavor to time their instruments according to the key set by the Court of Appeals. The general level of severity of sentences has been lowered; but this has been a general tendency, and in England the average is still noticeably higher than on the Continent.

The decisions of the Court of Criminal Appeal are themselves appealable to the House of Lords (Lords of Appeal), but only on points of law having exceptional importance and with approval of the Attorney-General. So that the jury-system is still compatible with guarantees of appellate justice for all accused persons.

To sum up: The English jury-system, which has served as the original type for other countries, operates in an atmosphere of its own. It lacks those notable defects that are elsewhere complained of. It has been modernized in large respects. It has been amended, with good results, and will probably be further amended (when a pending Commission reports); for in English legislation, practice precedes theory, when reform is in question. The people of England appreciate keenly the high reputation of their criminal justice, and give it their hearty support.

¹⁷ Too many groundless appeals were anticipated, as found by the experience of the United States. But in the result only some 6 per cent of convicted persons have appealed, and only 10 per cent of these have gained by it.