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Editorial

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EDITORIALS.

IN CASE OF FAMILY DESERTION OR NON-SUPPORT.

The article on the Court of Domestic Relations of Chicago, by Mr. William H. Baldwin, which appears at page 400 ff. in the last issue of this Journal, calls attention to a department of penology that has a character largely its own. Ordinarily the offender and the individual or the individuals who are injured have diverse interests. The punishment of the former, therefore, does not interfere with the welfare of the latter. Indeed, the injured may experience a considerable degree of satisfaction because of the legally inflicted discomfiture of the offender. In those cases, however, that come before the Court of Domestic Relations the offender and the injured, if husband and wife, have legally assumed common interests. If parent and child, once more, their life is common, and the restriction of one is the restriction of the other. The plaintiff and the defendant are representatives of a particular family—a particular unit in our social organization. This being the case, therefore, however carefully we may guard the dependents of convicted murderers, etc., from misfortune, we ought here to be particularly zealous lest in applying correctives we enhance that suffering of wife or children or both, on account of which the action was brought. This should be especially upon our conscience. To meet the situation we must provide for dealing sharply and quickly with the deserter or non-supporter. He must know exactly what to expect—and so must his family. To prevent pauperization, and in consequence, probably, forcing the unprotected into crime, these dependents must be supplied by their natural guardian, and with the least possible interruption or disturbance of normal domestic relations.

This suggests the query whether the deserter or non-supporter, or both, as the case may be, should be dealt with as a felon under the law or merely as a misdemeanor. One of the considerations that has arisen in this connection is the need of providing for occasional extradition of a deserter who has fled the state. There is an impression that extradition can not be secured in the case of an offense less serious than felony. As Mr. Baldwin, in his address before the National Conference of Charities and Corrections at Boston, June 10, 1911, proves, it is a mistaken impression. The constitution of the United States in defining the extraditable person (*Art. 4, Sec. 2*) says: "A person charged in any state with treason, felony, or other crime," etc. And this, as Mr. Bald-

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win points out, was confirmed fifty years ago by a decision of the Supreme court of the United States (24 *Howard*, U. S. 66) with reference to "treason, felony, or other crime," in the following language: "The word crime of itself includes every offense, from the highest to the lowest in the grade of offenses, and includes what are called 'misdemeanors' as well as treason and felony."

Nothing more is needed to prove the extraditable character of misdemeanor but there is further proof of the most cogent kind: the fact that misdemeanants actually are, in many cases, extradited—moved from one state to another with facility and despatch. Here one should notice Mr. Baldwin's statistics, in the address referred to, which show that in New Jersey, where desertion is misdemeanor, there is a higher proportion of extraditions compared to the population than in any jurisdiction in which the offense is a felony. In Colorado, Illinois, Delaware, Georgia, Kansas, Kentucky, Massachusetts, Maryland, Mississippi, Montana, New Mexico, New Hampshire, North Carolina, Pennsylvania, Vermont, and Wyoming the offense is misdemeanor also, and in all but Mississippi, New Mexico, New Hampshire, Vermont and Wyoming extraditions in greater or smaller number have occurred.

But the strongest reasons against making the offense a felony are in the first place, that the family has already been hard pushed by necessity occasioned by an indolent or reckless head, and to place him in prison is simply to aggravate the condition that led to the complaint against him. It is like fining the drunkard who has deprived his family of bread to supply himself with liquor; secondly, the case is usually begun in a lower court which has no power, and which often releases the defendant on the mere promise of support, when there is no machinery to secure it; it is much more difficult to get a conviction in a felony case, and the result is that many who should fare otherwise go scot free of all responsibility. As the secretary of the Humane Society of San Francisco, quoted in Mr. Baldwin's address, said, "The machinery is too big for the material handled."

The court that handles these cases should be a great probation institution with a group of trained probation officials at its disposal, with power to imprison at hard labor, the compensation for which should go to the family; with power also to forego commitment on condition that at stated intervals a specified sum be paid to a representative of the court for the support of the family concerned—a noteworthy feature of Judge Goodnow's court in Chicago.

Certainly, here as elsewhere, in penology and in education at large,

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it is of the utmost importance that failure to perform a social obligation should be followed by instantaneous correction. Whatever delays or makes it uncertain is mischievous.

The uniform law, proposed by Mr. Baldwin, and published in this issue at page 618 ff. is, with a few modifications as indicated in the note appended to the law, practically what the Commission on Uniform State Laws had already proposed. It provides that desertion or non-support be treated promptly and effectively as misdemeanor. It covers all the points that arise, and if generally enacted, it should do much to solve a perplexing social problem.

ROBERT H. GAULT.

EXAMINATION BY TRIAL JUDGE.

The Supreme Court of Kansas states (*State v. Keehn*, 85 Kan. 765) that it would appear from an Illinois opinion quoted that, while the trial judge has ample authority to conduct an extended examination of a witness, it is seldom safe for him to undertake to exercise it. The Kansas court takes a different view, stating that the purpose of a criminal trial is to ascertain the truth about the matters charged in the information, and that it is a part of the business of the judge to see that this end is attained. The trial judge says the Kansas court is not a dumb moderator over a contest, but an integral factor in the discovery and elucidation of the facts. He is not bound to rest content with the modicum of evidence doled out by counsel, but he may aid the jury in obtaining a comprehension of the facts. "Therefore, whenever in his judgment the proceeding is not being conducted in a way to accomplish the purpose for which alone it is instituted—the full development of the truth—or whenever he can effect a better accomplishment of the purpose, he not only has the right but it is his duty to take part." The court adds that there are limitations upon this power but that they are merely those which good sense and propriety suggest.

It would appear from the above case that a trial judge has not been "shorn of his common law rights" as has been expressed by some well known men, and that in some jurisdictions, notably Kansas and Georgia, he has exercised the particular right to examine witnesses in order to get at the merits of the case. The writer does not attempt to assert that a judge has this right in all jurisdictions, as he has attempted no exhaustive examination of the statutes of all the states, but it is apparent that the restoration of the judge to his commanding position occupied at common law is not, in some jurisdictions, a question of law but of ex-

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pediency. In the jurisdictions referred to, the matter may be stated thus:

1. That the trial judge has the legal right to examine witnesses;
2. That the exercise of that right may be reviewed in the appellate court on the ground of abuse;
3. That some trial judges, at least, have exercised the right;
4. That the office of judge may be restored, if ever lost, "to the commanding position occupied at common law" by the mere exercise of the right.

In the opinion of the writer, the matter is reducible to these questions:

1. Shall the trial judge exercise the right at all?
2. If so, how far shall he go in individual cases?
3. Granting the right and its attempted exercise, is it not apparent that greater care should be taken by the public to choose and retain persons of experience, ability, and fairness, as trial judges?

In these days of complaint, will the public pay the salaries, guarantee the tenure of office and exercise discriminating care sufficient to attract and select proper persons to exercise the above power?

W. E. HIGGINS.

CITY CHILDREN AND CRIME.

The report of a subcommittee of the committee on education of the City Club of Chicago, recently issued, contains material which should receive the serious attention and consideration of criminologists.

All social improvement must wait for education. But education must involve the development of habits of industry; of devoted application to a series of activities all of which, taken together, complete an adjustment of the worker to an aspect of his environment. Unfortunately there are thousands of young men and women in our cities who could do better but who, in the circumstances in which they are placed, are getting away from rather than moving toward those habits that make for social adjustment.

The report referred to indicates that in the city of Chicago there are 23,415 children at the crucial period of development—between fourteen and sixteen years of age—who are not in school. This is one and one-tenth per cent of the total population of the city. Over half of this number—11,750 to be explicit—are idle according to the census enumerators. The remainder, it is estimated, drifting as they do from one occupation to another, are actually employed only one-half of their time.

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Intermittent periods of idleness alternate with a few weeks of work. All this serves to develop that unsteadiness of purpose, irresponsibility of character, and irregularity of habit, which is the undoing of manhood and womanhood. It is not the least unfortunate aspect of this whole situation that fully one-third of the number quoted had not advanced beyond the fifth grade in the public schools before they went into the streets.

But what is all of this to the criminologist? Col. Adams, superintendent of the St. Charles School for Boys in this state, spoke at the Fifteenth Annual Conference of Charities and Correction in part, as follows: "Into the St. Charles School for Boys and all other similar schools throughout the country, boarding schools for delinquent boys, if you please, come the lads whom the courts have declared to be delinquent. *They are mostly from the large towns and great cities; occasionally there is one from the country and from the average and the smaller towns. The environment of the large percentage of the lads has been that of the slums, tenements and streets.* When we recall that the largest percentage of truancy and idleness is found among the denizens of such districts it is not a far cry to the conviction that if we could do no more than keep these young people away from the streets; if we could but get them into schools in which their interest may be directed forcibly to something else than to that antisocial behavior toward which so many in their ignorance are drifting; if we could do this we could accomplish much toward diminishing the train of juvenile offenders who are continually on their way to St. Charles and other similar institutions.

Furthermore, from a slightly different angle, the criminologist is properly interested in those who are employed during their whole time. They are at the lowest round of the ladder. What appears to many of them to be a vast confusion of means and ends is an impossible barrier to their imaginations. They do not see, neither can they see the possibilities that lie in the future for one who is industrious and painstaking. The tempters in the street find such youths an easy prey. This should suggest to the criminologist as it has already done to an army of workers in our public educational system that continuation day or evening classes, open for a few hours each week to employed children, may be of great moral value. They should open up the view of an honorable occupation to hundreds of boys and girls, and incite them to make their way upward. If so it is reasonable to assume that in such institutions we should have a check upon the development of juvenile offenders.

The Illinois branch of the Institute of Criminal Law and Criminology has appointed a committee to take up the problem of education as

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a preventive of crime and, through its legislative committee, to recommend progressive legislation. Other organizations are at work. They are approaching the problem from the pedagogic or from the economic angle. Some of them have drafted bills but differences of opinion prevail with respect to the means that should be applied. The supremely important thing now is that these organizations or their representatives get together in conference so that all may reach the same platform and array themselves behind one legislative proposal, to the end that without division of opinion, we may unitedly ask for whatever legislation may be most effective in supplying the need of all.

Assuming that we have found, in the class of young people of whom we have been thinking, a source of danger to our institutions, and that education—vocational or otherwise—is an effective preventive, then it seems to me that the proper course is clear. Make attendance at educational institutions compulsory up to or beyond the sixteenth year of age as far as practicable for all youths, whether they are employed or not. If this could be made to apply to the whole state, well and good. If differentiation is necessary, then at least extend the legal school age in cities of a certain class in which there is inevitably a considerable body of idle youth. It must then be compulsory upon these cities to provide, no doubt with the assistance of the state at large, such educational facilities in the way of regular and vocational schools, etc., as will best meet the requirements of the situation. This will, of course, include the provision of part-time continuation classes for those of legal age who are in employment. In order that the special ends of the criminologist may be reached it is absolutely essential that legislation on the subject should be not only permissive but compulsory.

The plan is not revolutionary. The city of Cincinnati, acting under the laws of the state of Ohio, is now compelling working children of school age up to sixteen years who have not completed the eighth grade to attend continuation schools for four hours a week. With rare exceptions the authorities have the hearty co-operation of employers, and the result is highly satisfactory. This is distinctly in the direction of child welfare. With any movement whatever of which this can properly be said the Institute of Criminal Law and Criminology can and will unhesitatingly identify itself. No organization can in common sense or in sound logic refrain from joining hands with others on that basis. Under that sign every society can ultimately attain its benevolent purposes.

ROBERT H. GAULT.

THE "THIRD DEGREE" AND TRIAL BY NEWSPAPERS.

In theory torture as a method of investigation has no place in our administration of the criminal law. The principal reasons for this are, first, because the idea is repellent to our feelings of humanity and fair play; second, because the presumption of innocence until guilt is proven is a fundamental principle of our law, whereas the practice of torture is based on the presumption of guilt; and, third, because it has long been recognized that admissions or confessions secured under the pressure of torture are unreliable.

At times the charge has been made that police inflict physical or mental torture in so-called "third degree" examinations; but since the examinations of prisoners by the police are generally conducted in private, it is difficult to secure proof of improper practices. It is, therefore, of particular interest to note a case in which the police administered the "third degree" before an audience of newspaper reporters, and even permitted these to join in the examination.

On the morning of Thursday, October 31st, Charles N. Conway and his wife, Lilian Conway, were arrested in Lima, Ohio, charged with the murder of Sophia Singer in Chicago on October 28; at 2 a. m. of the following day they were taken by Chicago detectives on board a train bound for Chicago; upon their arrival in Chicago at 7:30 a. m. they were taken to a police station; and at noon the woman confessed to detectives that the murder was committed by her husband. The experiences of this couple during the period from their arrest to the woman's confession are described in the following clippings from various editions of six Chicago papers:

At Lima—

While they were in the Lima jail both the man and woman came close to the verge of nervous collapse.

Conway appeared on the verge of a nervous collapse when he entered the room where the police and the reporters were. During the questioning the sweat broke out in beads on his forehead and streamed down his face.

They were put through a grueling cross-examination by the detectives immediately before their departure and when Conway, or Kramer, as he is known in Lima, emerged from the room where he was under fire the perspiration was dripping from him and his hands shook like leaves.

On the train from Lima to Chicago—

In the other coach there was little rest for the circus clown's companion—the snake charmer. But this for another reason. Detective O'Connor was at work on a theory with which he hoped to shake the woman's steadfast refusal

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to confess to being an accomplice in the crime. The grilling that began when the Chicago officers started their examination in Lima had not ceased for her when she boarded the train. * * * The strain maddened the woman. Once she broke into sobbing.

"Please stop now for just a little while," she would gasp. "I can't stand it longer."

Late on the night of November 1, after a rigorous examination, Detective O'Connor of the Chicago police force made the following announcement:

"We expect a confession in a short time. The woman isn't going to hold out much longer."

The trip from Lima was an ordeal for the prisoners, which found a continuation in a "third degree" of interrogation in Chicago.

The plan to re-enact the tragedy without giving the pair a minute to rest on their arrival here was done in order to bring about the confession.

In the Chicago police station—

Confident that she was breaking down and that a confession would be wrung from her, they plied her with question after question, and she was allowed little time for response.

The tortured woman screamed her denial. Her voice dropped into a moan. She half rose from her seat in the hard straight-backed chair and threw herself across the police captain's desk. She shook with agony.

"Why don't you confess now?" the police asked Mrs. Conway.

"I have no friends here, nobody is for me. I am all alone," the woman sobbed.

At one point a detective came out of the room and asked for coffee and water for Mrs. Kramer.

"Has she fainted?" he was asked. "No," he replied, "but she is very weak."

At this point the police inquisitors believed they were about to get a confession. The woman fainted, but was revived and asked for some coffee. This restored her and she went on under a fire of questions without breaking down.

Mrs. Conway became hysterical. Her screams could be heard throughout the station.

She was confronted by William R. Worthen, fiance of the slain woman. This seemed to mark the beginning of her collapse. Soon thereafter she became hysterical and searching questions soon brought on the breakdown.

Mrs. Conway's confession was made in a hysterical, despairing effort to save her own life.

Downstairs in the cellroom of the station Conway paced back and forth in a cell.

He could hear the screams of his wife, the hurrying about and the commotion in general, but he was kept in ignorance of the confession that had been wrung from the woman and the dramatic scenes that had taken place.

The prisoners were, of course, admonished during the course of the examination to tell nothing but the truth, and warned that anything they might say would be used in evidence against them. The inquisitors of the Spanish inquisition used the same formula. In a book on the inquisition published in 1734 (*History of the Inquisition*, by J. Baker),

the author says: "The criminals are with great care and diligence to be admonished by the inquisitors, and especially when they are under torture, that they shall not by any means bear false witness against themselves or others, through fear of punishments or torments, but speak the truth only."

As though fearful lest the results of their examination might not be publicly known the detectives gave interviews to the newspaper men throughout the day. Following are several of these interviews:

Captain John Halpin, chief of detectives, says—

"The Conways are guilty and will be proven so. Their own stories will convict them. In my opinion they premeditated the murder of Miss Singer."

Detective James O'Connor of the Chicago Detective Bureau, who, with Detective John Egan is in Lima to bring the prisoners to Chicago, is authority for the admission report.

"While we have as yet no absolute flat confession from 'Conway' or his companion that they are the ones who committed the murder," said the detective, "the admissions contained in the signed statements which we have obtained from the two are of such character that I am satisfied that we have sufficient evidence right now to convict."

Sergeant Whitney, who was in the lieutenant's room when the woman told her story, said:

"Mrs. Conway expressed willingness to tell all, and her story was a rambling and disconnected one. She admitted she had quarreled with Miss Singer the night the murder occurred. She said Miss Singer had asked her to go out with her and meet a friend on Monday night and that she refused. She said that this led to a quarrel and that she left the Conway room, where words had been exchanged.

"Mrs. Conway said her husband took up the quarrel with Miss Singer a short time later in the Conway room, and that during the quarrel she was in the dining-room. She said that while she was in the dining-room she heard a commotion in the Conway bedroom. The next she told of was when she and her husband ran out of the house. She said Miss Singer was on the bed tied hands and foot when they escaped.

"She was in too bad a condition to tell all the details, but made it clear in her statement that she was an unwilling witness to the killing. She said she was powerless to prevent it."

What would the situation have been if the endurance of Mrs. Conway had proved superior to the grilling of the detectives, and she had not confessed? The newspapers throughout the day had published statements of the detectives, indicating their belief in the guilt of the accused. Large headlines announced incriminating circumstances. One newspaper went so far as to tabulate, under the heading "Evidence in Singer Murder—Against Wooden-Foot Clown and Queen of Burlesque," various facts and statements tending to show the guilt of the prisoners. In short, the newspapers proclaimed abroad the guilt of the accused.

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Opinions prejudiced to the accused are thus created in the minds of the readers, who thereby are unfitted for jury service, or if not are provided with an excuse for escaping such service.

The administration of the criminal law is a subject that is attracting much popular attention and engaging the serious consideration of thoughtful men. Learned societies are appointing committees to investigate the defects of our system and to determine influences which tend to prevent the proper administration of the law. The Conway case presents in open and striking manner two pernicious features of our administration—the "third degree" and trial by newspaper. In fairness to the police their point of view should be considered. In so far as this can be determined it is that, since there are so many loopholes for escape in the trial of accused persons, the only practical and safe method of securing convictions is by extracting confessions. Though we are convinced that convictions at such cost are not desirable, yet the premise of the police deserves consideration. It is submitted that two of the greatest defects in the administration of the criminal law are the weak position of the trial judge and the frequency of reversals of convictions due to immaterial errors.

To prevent the "third degree" and trial by newspaper, and to remedy two striking defects in our criminal procedure it is suggested that a statute or statutes be enacted providing for the following:

1. That it shall be a misdemeanor, punishable by imprisonment, for any police officer to exert any force, mental or physical, against an accused person for the purpose of extorting any admission or confession.

2. That any admission or confession made by an accused person in response to interrogatories of the police shall be inadmissible in evidence.

3. That it shall be a misdemeanor, punishable by fine and imprisonment, for the editor of any newspaper to publish regarding an accused person statements or comments which create a belief in the guilt of the accused before his trial, thereby prejudicing him at his trial and interfering with the proper administration of justice. This is an offence at common law (*Rex v. Fisher*, 2 Camp. 563, and *Rex v. Tibbits*, 1902, 1 K. B. 77), but the courts in this country have hesitated to apply it.

4. That the trial judge be given power to declare the law (he has this power in most states) and to comment on the evidence.

5. That no judgment of conviction shall be reversed unless the trial court committed substantial error prejudicial to the defendant, thereby causing a miscarriage of justice.

EDWIN R. KEEDY.

THE PRESIDENT'S ADDRESS.

JOHN B. WINSLOW, CHIEF JUSTICE OF THE SUPREME COURT OF
WISCONSIN, RETIRING PRESIDENT OF THE INSTITUTE.

Members of the Institute:

Our fourth annual session opens under favorable auspices. The Institute may be said to have passed the experimental stage and demonstrated its right to live; its place among the agencies which are making for the betterment of the race is now not only firmly established, but widely recognized; its activities have gone on during the past year with gratifying success; progress has been made, but the field of labor is yet very large; we are met to review the past and take counsel for the future.

It is not my purpose in this address to review the work performed by the various committees during the year. The reports of the committees will speak for themselves when presented and read.

One general observation may well be made here, however; the Institute greatly needs funds for its work over and above the money received from annual dues. It can never accomplish what it ought and desires to do until it has something in the nature of an endowment. Much research work must necessarily be done if the problems before it are to be rightly solved. The members are all busy men; generally speaking, each man is fully occupied with his own work, and can give to the work of the association but a few brief hours snatched from his regular labors. Such men can spend no time in exhaustive research, nor should they be expected to do so. Still less should they be expected to expend their own funds in employing others to do research work. The result is that necessary investigation is not done and the Institute is not accomplishing the results which it might accomplish if endowed with funds. The question whether an endowment for research can be obtained is a question fully as important as any which we have before us, and I commend it to the earnest consideration of every member of the Institute.

To say that we live in a wonderful time is trite, but true as it is trite. The nineteenth century was called the wonderful century. The twentieth century bids fair to eclipse its predecessor in wonders, and the first decade only has yet passed. "The moving finger writes, and having writ, moves on." Thus wrote the Persian philosopher poet centuries ago. It was true then, and true now.

The finger of human progress is always writing and always moving on. It never repeats and it never obliterates. What is written is written, whether it be for good or ill.

In this second decade of the twentieth century it is writing many things of surpassing interest, but the three words which it writes and which overshadow all others are the words, "Education," "Democracy," and "Service."

I use the word education here in no contracted sense. I mean to cover by it all knowledge, whether it be purely philosophical and abstract, on the one hand, or purely utilitarian on the other; whether gained in the classroom, or in the solitude of the closet; in the laboratory, in the factory, or in the open under Nature's arching sky.

But a few days since it was reported in the daily press that more than 11,000 persons had received instruction in the various departments of the University of Wisconsin during the current year. It seems but a very short time since the number of students at this university was not more than a paltry two or three hundred. The schoolmaster with his primer was said to be abroad a century ago, but where there was one schoolmaster abroad then there are a hundred now. The extension department of the university just referred to through its correspondence school and its traveling professors brings the university to the door of every Wisconsin citizen in a way that would have seemed incredible a quarter of a century ago. Not only do the people come to the university by thousands where they formerly came by tens, but the university now goes to thousands who cannot come to it.

And all this while the correspondence school and extension department are still in swaddling clothes. None can safely predict the future of those schools. If the experience of the past be any fair criterion for the future, there can be little doubt that before many years the extension department will number its students by thousands where it now numbers them by hundreds. Indeed it would be little short of folly to attempt to set any boundaries to its field of usefulness. This condition is not by any means peculiar to Wisconsin, nor to the United States. In practically every civilized state the story is the same, though differing in degree. It is very certain that there will be no retrograde movement. The masses are to be educated, perhaps not deeply nor exhaustively, nor always wisely, but for the first time in the history of the world the great mass of the people are to receive some sort of education. No longer will the poet have occasion to write of the rural clod:

"Who never had a dozen thoughts in all his life, nor changed their course, but conned them o'er from morn till night, from youth to hoary

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age." Such people will not exist, or, if they do, will be so rare as to be negligible.

I am not now concerned with the quality of the education which is being given, nor with the question whether the education is in all cases admirable, or even desirable, but I am simply noting the great fact that the time is very near at hand when practically every citizen, male or female, regardless of station, will not only be able to read and write, but will have such general knowledge on subjects connected with his business or the general welfare, or both, that he will deem himself able to discuss and take an intelligent part in the social and political movements of the time.

Coincident with this wonderful increase of education among the masses of the people is coming also a wave of democracy. Indeed it is impossible to see how it could be otherwise.

The man who never thinks is the contented man; he is the man who does not wish for any share in public affairs, but is willing to let the political boss manage them as he sees fit. He is content that others should govern. The man who thinks, even though he thinks crudely, is apt to be discontented; he sees the defects and abuses in social and political fields, and he clamors for reforms and is ready to do his own share in bringing about those reforms. He is the true democrat. He proposes to do part of the governing. That which promotes individual thinking inevitably promotes democracy; education, even of the most defective character, promotes some sort of thinking; hence it seems that the two must go hand in hand, and that the great democratic movement of the day is linked inseparably with the great educational advance.

In speaking of the democratic movement, I refer not to America alone, but to the entire civilized world. Take the world's map and put your finger where you will, and you will find some phase of it. In Great Britain it takes the form of nullifying the powers of the House of Lords and curbing privilege of birth; in France and Germany it appears in the garb of socialism, and in other countries in various movements all directed with greater or less wisdom to the wiping out of one form or another of privilege. Everywhere there is political unrest, everywhere there is clamor for more direct and complete control of the government by the people. In our own country the democratic drift is perhaps more marked than anywhere else. We have long thought that we in fact had a democracy, or perhaps more exactly, a group of democracies united for self-protection and mutual benefit here on this side of the Atlantic. As a matter of fact there is much in our state and national governments that is not strictly democratic. But unless every

sign fails we shall have democracies here before many years such as the world has never seen on any such scale before; at least we shall experiment with them.

The democracies which we have had and still have are representative democracies founded on the principle of preserving to the greatest possible extent the rights of the individual. The democracies which are coming, unless all signs fail, are democracies of direct popular action in which individual rights and privileges must give way in very many and very important particulars to regulations and restrictions deemed necessary for the benefit of the great mass of the people.

The democracies of the present enact their laws by representative bodies chosen from the electorate, and delegate many governmental powers to officials or bodies of officials removed by many steps from the direct control of the people. The democracies which are coming propose to place both legislative and executive power directly in the hands of the people, or under their immediate control, so far as that may be possible. The democracies of the past have limited the electorate to male citizens, the democracies which are coming will without doubt welcome to the electorate female citizens on equal terms, not as privilege, but as a measure of eternal justice and right.

The direct primary, the initiative and referendum, the recall, the equal suffrage movement, the election of United States senators by popular vote, the presidential preference primary—all these movements, whether yet adopted or only agitated, are simply manifestations of the overwhelming democratic spirit of the time. Some of them may prove to be mere experiments which will be abandoned after trial, but some either *have* come or *will* come to stay, and, if I mistake not, other changes which will tend to bring the administration of governmental affairs more quickly and completely within the control of the electorate will, at no distant day, be added to them, and ultimately be incorporated in our state and national governments.

I am not now discussing the wisdom of any of the innovations which are coming, or are already here; that would make too long a story for this address. It is sufficient for my present purpose to say that there seems no doubt that they are coming, that they will be tried out, that some of them will be permanent, that they will work important changes in our social, as well as our governmental life; changes which every citizen ought to consider seriously.

The most serious thought which presents itself to my mind as I view these movements for more direct and speedy control by the people of all governmental affairs, is the thought of the increased responsibility of every citizen.

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It has been truly said that the only foundation upon which a democracy can rest is the intelligence and virtue of the people, and this is manifestly true. If it be true of a representative democracy, where legislative and other governmental activities are carried on by representatives with only an occasional appeal to the people, how much more true must it be where the people themselves by initiative, referendum, recall, or other kindred means, keep their own hands directly upon governmental processes.

If the people are to rule in person and not by representatives, a proposition which, as applied to a great and populous state, is difficult but perhaps not impossible, the people must be fit to rule; to be fit to rule, they must be not only educated, but the great mass of them must be honest and law abiding. A pure democracy cannot exist if its electorate be either ignorant or corrupt. If the fountain head be poisoned, the waters of the stream cannot be sweet.

The question whether the American electorate is in all respects fit to assume the duties and responsibilities which must result from the new democracy which is at our doors is by no means free from doubt. We are much accustomed to boast of the intelligence and patriotism of our people, but boasting will be of little account here.

The question is, Are present conditions making for a higher standard of citizenship? Are we sure that we shall have an electorate of a grade which can safely be trusted with the power which the coming democracy proposes to place in its hands?

The question is by no means easy to answer. The most casual and superficial observation shows that great changes are going on in the character of our population, and the conditions which surround the life of the people. From a nation largely composed of rural dwellers, we are rapidly becoming a nation of urban dwellers. Regardless of the difficulties resulting from a vast influx of immigrants whose difference of language, race and temperament make assimilation difficult, it is very certain that we have some perplexing problems ahead of us.

The great city has come and come to stay, and it has brought its great problems with it—problems which will call loudly and more loudly for solution as the years go by. They are the problems of the slum, the tenement house, the social evil, of child labor, of congested population and unsanitary living, of alluring vice in all its phases, and many others, all of which have greater or less bearing upon the physical and mental manhood and womanhood of the race. The sturdy farmer, who is daily breathing in health and strength under the open

sky, surrounded by the inspiration of Nature's wonders, is giving way to the city dweller, the operative in the great shop, and the thousand and one stunted and narrow-chested workers in the city streets, who just manage to keep body and soul together, and go to bed at night hopeless and wearied, or try to drive away all thought of the morrow by forced and shameful merriment. The picture is not overdrawn, and it is not encouraging to one who is looking for a higher type of citizenship.

I do not say that the moral fibre of the nation is weakening. I see churches, schools and philanthropic societies of various kinds working as never before, but I see also the need of such work as never before. The political condition of most, if not all, of our great cities is distressing already under what is only a representative democracy; what will it be if we are able to have direct democracies and immediate control by the electorate? What will it be when the cleavage between great wealth and abject poverty becomes more pronounced? What will it be if class hatred grows more acute? What will it be if the urban nurseries of crime go on unchecked and the professed criminal classes increase in the future as they have in the past? Who can answer? Certainly not I. It is not pleasant to speak of these things—indeed they are not much spoken of in our best society. People go to their receptions, their teas and their banquets, and talk of the weather, of the last opera, or the latest book. It is far more comfortable to ignore such disagreeable questions as those I have suggested. Yet there will come a time when they must be considered, there will come a time when the wonder will be that anyone could think of ignoring them. It is far better to consider them now and to devise ways and means of correcting them than to let them go on unchecked until they threaten the very existence of all law and order.

So far I have spoken only of the problems which are peculiar to the great city, but there are others which are present not only in the city but in the village and in the country as well, and they also threaten to affect the quality and strength of citizenship.

If I be not greatly mistaken, the great increase of wealth and luxury which has come from the development of our wonderful natural resources has resulted in a perceptible lowering of ideals. Our forefathers struggled for very existence in the face of tremendous difficulties; they subdued forests, endured the privations of the frontier, and in the midst of toil and privation laid the foundations of the state that was to be. Amid such labors and privations it was natural that they should develop the sterner elements of character, the elements of fortitude, both physical and mental, of self-control, steadfastness and probity of purpose.

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We who have entered into their labors and are reaping the results of their self-denial, either by way of making gain from vast business enterprises or dwelling in an atmosphere of ease or luxury which they made possible, are quite likely to have our thoughts directed to the material things—the things which make life pleasant and enjoyable, to the neglect of the sterner virtues. Surely I am not wrong when I say that this tendency is noticeable on every hand, nor am I wrong when I say that in it there is greater danger of a loss in sturdiness of character.

Now we cannot make any appreciable change in the material conditions of the age in which we live. We cannot go back to the days of our fathers if we would. "The moving finger writes, and having writ, moves on,"—not backward. The great city will become greater, the opportunities for the acquisition of wealth will not decrease, but rather increase, the use of the conveniences and luxuries which modern life places within our reach will not cease, the temptation to live a life of ease and pleasure, regardless of the cry of the unfortunate and afflicted, will be just as strong. How are all these weakening tendencies to be met and overcome? How are we to make sure of that high quality of citizenship which will be necessary in such a democracy as we shall have?

This question is probably not capable of an authoritative answer in a single word, nor shall I attempt to give one, but the word which comes nearest to it is the third word which the moving finger of progress is today writing, namely, the word "Service."

For centuries individualism has been the keynote of civilization, especially in this land which has boasted so loudly of its freedom and equality. We have gloried in the idea that every man was the master of his own destiny and must fight his battle alone; we have seen the struggle for wealth and social distinction—nay, even for the necessities of life become fiercer and fiercer, and we have condoned the ruthless cruelty and selfishness of it all on the ground that all citizens have equal opportunities and that the triumph of the strong and the trampling down of the weak is but the working of nature's immutable and righteous law.

But the consciousness that man cannot live for himself alone has come at last; the public conscience is awake; we now for the first time realize faintly and imperfectly the marvellous significance of the parable of the good Samaritan. We are learning who are our neighbors, and we are realizing that an injury to "one of the least of these" is an injury to society as a whole.

The trumpet call of service to fellow men is sounding today as it never has sounded before since the days when the great Master trod the

shores of Gallilee. Thousands of men and women with the spirit of Christ in their hearts are hearing the call—men and women who could if they chose be clothed in purple and fine linen, and fare sumptuously every day. But they have chosen the better part. Comparatively speaking, their work has just begun and yet there are results to show. The slum is yielding to the settlement. The haunts of vice in the great cities are still practically untouched, but there is handwriting on the wall, and the waves of an awakened public sentiment are rising with ominous strength. Everywhere earnest men and women are banding together and devising ways and means, either by way of legislation or agitation, or both, by which moral standards shall be raised, the frightful injustice of modern life in the great cities shall be corrected, disease vanquished, vice made hateful and life made to hold its promise of hope and joy to the most unfortunate.

So significant has the great social service movement become that a political party, appealing to the electorate of the nation for support, has recently been formed with a platform which pledges the party to work unceasingly, both in state and nation, for social and industrial justice along numerous lines which it names, and along most of which work has already been begun. Strangely enough, the platform omits all reference to that important phase of social justice represented by this institute, namely, the improvement of criminal law and procedure, so that certain and speedy justice shall be attained.

Whether such a political party was necessary or not is doubtless a question which is open to serious debate; very much of the work which it approves and incorporates in its platform is already under way and supported by citizens of all parties, but the mere fact that such a platform has been made and a new party founded upon it is very significant as showing the changed condition of the public mind. Fifty years ago the attempt to form a party upon such a platform would have been regarded only as the chimerical dream of a political visionary. Now it is received seriously and with a considerable measure of public approval, as far, at least, as its social service program is concerned.

The present movement for prompt, scientific, and at the same time, humane treatment of the criminal is unquestionably part and parcel of the great awakening of the public conscience. It takes its place with the other contemporary movements for better citizenship with entire confidence in its right to that position.

If there be any questions of greater importance to society than the questions which cluster around the criminal law and its due enforcement, I know not what they are.

They are questions which go to the very foundations of all social order. If our criminal laws are not just and scientifically correct, in principle; if their administration is, as President Taft said not long ago, a disgrace to our civilization; if we are year by year building up in our midst an ever increasing criminal and degenerate class whose members are predestined to crime from their very birth, it is surely time that we considered the subject seriously, if not prayerfully.

It must be admitted, I think, that we have been singularly slow in appreciating the defects in our criminal jurisprudence. Indeed we have been accustomed to regard ourselves as possessing well nigh perfect methods of dealing with and punishing crime. We have gloried in our Anglo-Saxon heritage of the common law, our trial by jury, our constitutional guarantees against medieval abuses, and we have rested secure in the fond belief that there could be no improvement, and that other nations possessing no such ideal systems were justly the subjects of our pity.

It is not pleasant to be awakened from a beautiful dream, but if it be a false dream of security when danger impends, the awakening cannot come too soon. That our dream of practical perfection in dealing with crime was in large measure ill-founded cannot be denied; how the defects in the system may be remedied is the important question.

The ideal treatment of the supposed criminal must be prompt, just, scientific, and humane; it must result in the protection of society from violence and the gradual decrease of crime.

The criminal code which will accomplish this desired result should in my judgment contain certain essential features which may be stated in general terms as follows:

I. It should be simple and easily understood, not only in its procedure, but in its definitions and statements of substantive criminal law.

II. It should provide for the prosecution of all crimes by information; if indictment by grand jury be preserved at all, its use should be optional with the trial court.

III. It should give the trial court plenary power to amend indictments, informations and all other proceedings, at any time during the trial or after verdict in furtherance of justice, care being taken to preserve the defendant's right to know the nature of the charge made against him, and to have the amplest opportunity to make his defense.

IV. Distinction should be made between confirmed criminals and those of whose reform there is hope, and the means should be given to the trial court to ascertain in which class the convicted person belongs.

V. Confirmed criminals, of whose reform there is no hope, should be effectually and permanently segregated from society, so that they may neither continue the race of criminals nor instruct others in their nefarious business.

VI. As to first offenders and other persons of whose reform there is substantial hope, the courts should have power to suspend sentence indefinitely and place such persons under the supervision of probation officers, or commit them to reformatories specially designed for such offenders, where there is opportunity for discharge upon parole.

VII. The trial court should have power to suspend sentence after conviction, in case of youthful first offenders, and cause an investigation to be made by medical and psychological experts, to the end that if it appear that the criminal act was not committed with deliberate criminal intent, but was rather the result of unfortunate environment, or misfortune, or temporary lack of mental balance, the court may provide for disciplinary, therapeutic or reformatory treatment, instead of imprisonment.

VIII. Juvenile courts should be provided for child offenders, where they do not now exist, endowed with the broadest powers, enabling them to treat the erring child sympathetically and mercifully, and apply the proper reformatory or disciplinary measures rather than imprisonment in jails or bridewells with the harlot and the drunkard.

Power should be vested in the court or in some other officer or board, to prevent by segregation or some other efficient means, the imbecile and the degenerate criminal from returning to society or propagating his kind.

X. I think (except as to capital offenses) the court should have power to impose an indeterminate sentence, leaving the question of length of term to a board acting on accurate knowledge of the criminal's history, behavior and apparent progress toward reformation.

XI. Whether the principle of the indeterminate sentence be adopted or not, power should be vested in some responsible and discreet board in cases where reform is possible, to parole prisoners under proper supervision, and perhaps there should be provision made for the granting of a certificate of rehabilitation of character by the trial court after a sufficient lapse of time and assurance that reform is complete.

XII. There should be no absolute right of appeal on the part of the defendant, except, possibly, in capital cases; in other cases an appeal should be had only when the same is allowed by the trial judge, or by a judge of the appellate court.

XIII. No judgment of conviction should be set aside for error

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unless it appear affirmatively to the appellate court that the error caused a miscarriage of justice, or seriously affected the defendant's substantial rights.

XIV. The state should have a right to obtain a review in the appellate court of rulings resulting in the discharge of the accused because of supposed error or defects in pleading or procedure.

XV. Power may well be given to the appellate court, in cases where by inadvertance the proof of some material fact has been omitted in the trial court, to receive the proof, ascertain the fact and enter the proper judgment rather than to reverse the judgment, and order a new trial in the trial court.

I do not assume by any means that the foregoing propositions cover all the requisites of an ideal criminal code, nor all the questions which may properly be considered by this association, but I simply present them as covering the more obviously important general propositions for which the institute is working.

From them it is not difficult to state the general nature of the service which the institute hopes to render to the social fabric; it hopes to make the administration of the law simple, the results certain, prompt and just, and mere useless delays impossible, remembering at the same time that speed is desirable only when it is accompanied by justice; it hopes permanently to remove from contact with society the confirmed criminal and the moral degenerate, and ultimately to eliminate the criminal class; it hopes to abolish the practical seminaries of crime now existing in the penal institutions where all classes of criminals are indiscriminately massed together; it hopes by the wise use of the parole and probation system to make reform of first offenders the rule and not the exception; it hopes to apply scientific methods to abnormal offenders and to provide for such offenders such therapeutic, disciplinary, or segregative treatment as expert advice shall indicate to be the best means of restoring them to a normal condition; it hopes to surround the juvenile criminal with the sympathetic care of a foster parent and to rescue it from a career of crime rather than to consign it to the company of abandoned criminals where an advanced education in crime is inevitable.

Any organization which can efficiently aid in producing these results will be entitled to the gratitude of every citizen; it will render a service to society, the importance of which can hardly be overestimated.