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Notes and Abstracts

NOTES AND ABSTRACTS.

ANTHROPOLOGY—PSYCHOLOGY—LEGAL MEDICINE.

Medicine and Crime.—In the January number of this JOURNAL Dean Vaughan presented a very able argument to support the thesis that crime and its elimination are primarily medical or sanitary questions. Without the slightest desire to minimize the fact that the problem of crime in general has its sanitary aspect, it cannot be overlooked that medicine by no means covers nor can be made to cover either the diagnosis or treatment of crime.

Tarde is quoted as saying that "heredity plays an enormous role in the production of crime." It is true that Tarde did recognize the role of heredity and race, particularly in the problem of criminal irresponsibility. But, on the other hand, he is perfectly explicit as to where he would place the heaviest emphasis. "If hereditary madness engenders irresponsibility it is not so much that it is hereditary as that it is madness." (Penal Philosophy, 179.) "Badly nourished brain, misfortune, poverty; here is all, then, that remains of the criminal type." (*Ibid.*, 67) "The criminal type is the professional type." (*Ibid.*, Sec. 52.) A large section of the book is given over to a discussion of the "Preponderance of social causes." (Sec. 63 *ff.*)

Goddard and other authorities are quoted on the tremendous rate of feeble-mindedness among delinquents, adult and juvenile. Any of us who has worked in the Juvenile Court cannot have escaped the conviction that feeble-mindedness is a stubborn factor in the problem of delinquency. But we must beware of letting the new doctrines of feeble-mindedness run away with us. Dr. Kuhlmann in the January number of the JOURNAL, and Miss Bronner in the issue for November, 1914, both urged caution in the acceptance or use of reported high rates of feeble-mindedness in delinquent groups. Their warnings were based upon the inapplicability of existing tests, upon the unrepresentative character of the groups tested (in the language of statisticians, upon inadequate samples), and upon the abnormal circumstances usually surrounding such tests. In any event feeble-mindedness is only partially a medical problem, as Dr. Gesell has pointed out.

Dean Vaughan is quite correct in urging that there has been too much talk about individual rights and liberties and altogether too little about personal responsibilities and duties. A good deal of the opposition to sterilization, for example, is merely ad hominem chatter based upon a fundamental misconception of the real nature of a "right." Personally I stand quite ready to waive my "rights" and to open my house to the sanitary inspectors when they ask me to do so. But at the same time I should like to enquire just what are the limits of my personal rights and responsibilities in the matter of a compulsory annual medical examination: how, to be concrete, am I to be assured that the diagnosis resulting from such an examination is to point the way to health and morality? Within the past month an eminent health leader has told me that theories of pneumonia change almost with every moon, and in a notable case of some other disease recently thirteen doctors of repute wrote thirteen different diagnoses, none of

which proved correct: and the patient died into the bargain. Now this does not argue anything against medicine, except that it would be incautious, to say the least, to tackle so complex a problem as crime merely from the medical end. Moreover, as it approaches sociology and economics, medicine becomes more scientific. For example, the "tripod" upon which the treatment of tuberculosis rests—namely, rest, food and air—is at bottom economic and sociologic. The same is true of the handling of cases of occupational diseases and many others. Again, the most promising step in recent medical work is the addition of so-called "social service" to hospital, convalescent, and general medical practice.

Hence in answering Dean Vaughan's question, "Shall we submit to the surgeon's knife and be made sound or will we enjoy the present as best we can and leave the future to our children?" I should say everything depends upon who the surgeon is and what his knife. If by surgeon he means the man who will cut away the rotten tenement and shack, who will compel the abatement or elimination of sweatshops, smoke, under-employment at starvation wages, juvenile street-trading, commercialized vice, the taboo upon the unmarried mother, the twelve-hour shift, child-labor, the saloon, the puritanic spirit which forbids children to play and otherwise "desecrate the Sabbath," but provides nothing rational as an outlet for the play instinct and compels it to express itself clandestinely and vulgarly; or the man who will overcome the present ineptitude of police, courts and jails, or who can humanize the general spirit of exploitation: if the definition of surgeon includes all this, there can be no disagreement. Along with the doctors and surgeons and nurses and sanitary inspectors must march all the company of social workers and the great lay body of an illuminated public. For the very success of medical work itself the physician must appeal to the support of educated public sentiment. Ten chances to one this educating of public sentiment in the matter of the criminal will have eliminated the very problems which our medical and social schemes have set themselves to cure. In any event the educative means will have been, not medicine, but economic and social institutions. That is to say, crime is fundamentally a problem of social economy, with medicine and surgery as adjuncts. A. J. T.

Factors in Education for the Abatement and Cure of Diseases and Crime.—"The suppression of crime is not at all a legal question. It is rather a problem of physicians, economists, parents and teachers. Homemakers, teachers, sanitarians in all walks of life must combine in the work of developing and maintaining of a public sentiment that shall abate and cure disease and crime. The mother must be more interested in rearing civically, morally and physically strong boys and girls than in fashion or whist; the father, more interested in his home than in his lodge, club, equally as interested in his boys and girls as in his business, whether that business is farming, teaching, merchant, doctor, editor, clergyman, worker in factory, or whatever it may be. What is that which should be done for the child that shall make it possible for him to develop into a useful and respected citizen? In the large centers of population, at least in some of them, this question is being answered by juvenile courts, detention homes, probation officers, good environments for delinquent boys and girls. The instrumentalities to which we have referred proceed upon the wise principle that *the state is the ultimate parent of all children, that a weak family is a weakness of the state.* In dealing with disease and crime preventive and curative measures now go hand in hand. The juvenile courts, the probation officers, the work of the detention homes are mighty factors in the prevention and cure of crime.

"Keeping the stigma of arrest off delinquent boys and girls, prevents criminals and cures crimes. These delinquents are more often an effect of parental cause. Why punish the effect? The Cook County Juvenile court practices sympathy and consideration in dealing with delinquents. No arrests are made. The delinquent is brought before a sympathetic human judge and he talks the matter over with this magistrate, who sends him to the detention home, the Juvenile Psychopathic Institute, puts him on probation, or finds him a good home. This is prevention of criminal making, cure of crime. The practice of this court in the reformation of delinquent girls is sublime. In so far as it is possible to do so, the darkened page in the girls' lives is guarded from the public gaze. A woman judge, a woman stenographer, a woman probation officer and the mother of the delinquent girls are an ideal group before whom the wayward girl may unburden her soul and look for sympathetic aid and justice, says Judge Pinckney. Miss Mary M. Bartelme hears the cases against delinquent girls, and she and Judge Pinckney are annually preventing hundreds of delinquents from becoming criminals. In view of the great work being done to prevent crime, cure the delinquency, we are led to believe Charlotte Perkins Gilman's statement, The world's last prison will be a hospital.

"The juvenile courts are doing much, but in the last analysis, we must look to the home and school to prevent disease and crime. Neither of these great factors are doing anywhere near what they must do if the ravages of disease are prevented, the march of crime halted. Let us come from the abstract to the concrete. Take the example of the social-center town hall, church and schools of New England, where disease and crime were hardly known. It won't do to point the finger at New England of today. If she has receded from her commanding position as citizen maker, it is due to the fact that degenerate parents have multiplied more rapidly than normal ones. Coming closer home, consider Hillsdale city and county which, through education and civic living, has the lowest disease and crime record of any corresponding unit of population in Michigan. This county organized a civic-health movement last March that is an example which may be followed by other counties in the state in the prevention of disease and delinquency; likewise, Jackson county is another example of sanitary organization."—D. E. McClure, Asst. Secy. State Board of Health, Lansing, Mich. From *Public Health,* August, 1914.

Two Cases of Criminal Imbecility.—*Case I.*—A sixteen-year-old boy murders his former teacher, is arrested, makes a confession, is indicted and tried for the crime.

The theory of the prosecution: Confession is taken at its full value. Circumstantial evidence is added and although no motive is discovered, the boy is supposed to have committed the deed in accordance with a long planned and well worked out scheme.

The theory of the defense: The boy is feeble-minded, not responsible, and while knowing what he was doing, did not know the nature of the deed and the wrongfulness of it. The boy's confession not to be taken too seriously, because he is an imbecile. This fact being recognized, it becomes entirely possible that the whole affair was a sexual matter and thus the motive is supplied and the whole occurrence made at least intelligible.

Case II.—A nineteen-year-old boy in company with an older man murders an overseer. Motive of the elder man, jealousy. The boy had no motive, but a study of his confession and the circumstances makes it clear that he was act-

ing under the suggestion of the older and stronger mind. Not having intelligence enough to resist, he does as he is told. This illustrates the power of suggestion or influence where a feeble-minded person is concerned.

Both boys had succeeded fairly well in the fifth grade of public school work, but failed absolutely and entirely to be able to do sixth grade work. The Binet examination agreed entirely with this school record.

(Abstract of paper presented by Dr. H. H. Goddard of Vineland, N. J., before the American Psychological Association in Philadelphia, Dec. 31, 1914.)

The Value of Anthropometric Measurements in the Diagnosis of Feeble-Mindedness.— Goddard and Mead have demonstrated that the feeble-minded of all grades are below normal in height and weight, with greater abnormality in the lower grades than in the higher. The present study is an analysis by exact mental ages of psycho-physical measurements (right grip, left grip, vital capacity), as well as physical (standing height, sitting height, weight), based on data from 490 feeble-minded boys and 185 girls of all ages and grades. The analysis by mental age is made possible by comparison of the data with Smedley's percentile tables, thus eliminating chronological age by use of age-percentiles. These percentiles are averaged for each measurement for the averages of the physical measurements, the psycho-physical, the total and the excess of physical over psycho-physical. From these computations definite positive correlations are found between mental age and all measurements. The specific character of the anthropometric "curve" is typical, and has a highly diagnostic value, the slope in particular being very highly correlated with mental defect of all degrees. Specific relationships between the several measurements and for the sexes are apparent; boys are more variable than girls, psycho-physical measurements are more variable than physical; no relation is established between variability and degree of defect. Psycho-physical measurements are much more below normal than physical, and more highly correlated with mental age. Boys are more below normal than girls in all respects except vital capacity. Weight shows the least retardation and vital capacity the most. Sitting height is more abnormal than standing and right grip more than left. The measurements hold their diagnostic value for a special group of feeble-minded cases which did not show complete feeble-mindedness when first examined, as well as for a group of normal subjects.

The correlation between measurements and mental age, by sexes, are:

Sex.	Stand. Ht.	Sit. Ht.	Wt.	Rt. Grip.	Lt. Grip.	Vit. Cap.	Phys. Av.	Psycho-Phys. Av.	Tot. Av.
Boys	.30	.39	.38	.58	.60	.42	.62	.68	.60
Girls	.41	.36	.45	.57	.46	.49	.48	.58	.56

In no case except weight for girls do as many as one-fourth of the cases reach the normal average in any of the measurements.

Without exception the individual "curves" for all girls slope downward, and for boys only two per cent fail to slope downward, and in half of these two per cent the physical average is very far below normal.—Abstract of paper by E. A. Doll of Vineland, N. J. Presented at the meeting of the American Psychological Association in Philadelphia, Dec. 31, 1914.

COURTS—LAWS.

To Regulate the Pardoning and Parole of Prisoners (House Bill 1313, Massachusetts).—*Be it enacted by the Senate and House of Representatives*

in General Court assembled, and by the authority of the same, as follows:

SECTION 1. The parole boards and advisory board of pardons of Massachusetts shall, after the passage of this act, consist of three justices of the courts of the commonwealth, one of whom shall be a justice of the superior court, who shall be the chairman, and two associate justices of the police, municipal, or district courts of the commonwealth, to be appointed by the Chief Justice of the superior court, and any member of said board by the chief justice, and hold office at his pleasure.

SECTION 2. This board shall hold monthly meetings at the state prison, and at each of the two reformatories, to consider the applications for pardons that may be referred to it by the governor, and the parole of such prisoners as may be eligible. They shall receive such compensation, in addition to their regular salaries, as may be provided by the general court, and shall also be reimbursed for their necessary traveling expenses.

SECTION 3. This board is authorized to expend for clerical work a sum not exceeding twenty-five hundred dollars annually.

SECTION 4. The reports upon pardons shall be made directly to his excellency the governor. In case a parole is voted to a prisoner, the prison commissioners shall be notified who will issue the permit of release when home and work conditions are found to be satisfactory. The after care of such paroled prisoners shall be the duty of the prison commissioners.

SECTION 5. Chapter eight hundred and twenty-nine of the acts of the year nineteen hundred and thirteen is hereby repealed.

JOSEPH MATTHEW SULLIVAN, Boston, Massachusetts.

A Bill to Provide for the Care and Detention of Feeble-Minded in Illinois.— Many critical social conditions now face the people of Illinois, but of these perhaps none contribute more to the poverty, dependency, crime and vice of today and to the degeneracy of tomorrow than does the presence in our community of thousands of hopelesly irresponsible feeble-minded persons.

The teachers in our schools fail absolutely in the training of numbers of these pupils; the secret of their failure lies in the fact that these children are uneducable, that they are feeble minded. The social workers in our cities fail absolutely in their effort to re-establish many families, and this in spite of continued and substantial assistance and personal endeavor; the secret of their failure lies in the fact that the heads of these families are uneducable; that they are feeble-minded. The judges in our criminal courts are coming to realize the futility of striving to improve or even to intimidate by repeated punishments a large number of criminals; the secret of this failure with these repeaters lies again in the fact that they are uneducable; that they are feeble-minded.

The effort to train the feeble-minded person, either as a child or as an adult, for a place of individual responsibility in life, is hopeless; it is an attempt to do the impossible. Such persons, left to their own resources in the community are tossed from slum to almshouse, to reformatory and to prison. Moreover, they leave in their wake numerous progeny which perpetuate their helpless kind; for the feeble-minded produce many children and feeble-mindedness has, all too surely, been proved hereditary.

It is the plain duty of society to protect these helpless persons, and to prevent as far as possible, their feeble-minded legacy to the next generation. Both of these ends may be accomplished by providing care for the feeble-

minded in industrial institutions, where experience proves they lead happy, busy lives, from the time the feeble-minded condition is discovered until the end of their lives.

At the present time Illinois cares for some 15,000 insane persons in eight hospitals and a ninth is in course of construction. She cares for but 1,600 feeble-minded persons, and this although a conservative estimate based on surveys made in other states and partial surveys made in Chicago, places the number of feeble-minded in our state at several thousand beyond the number of the cared-for insane, and although such an authority as Dr. Walter Fernala of Massachusetts states the danger to the community from a feeble-minded person to be on the average three times as great as the danger from an insane person.

Moreover, the condition is made still worse by the fact that at present the state has no power to retain in its *one* institution a feeble-minded charge, which it knows to be a danger to itself and to the community when at large, if its parent or guardian requests its discharge. Children are left at the institution until its good care brings them up to their best mental and physical vigor; they are then withdrawn and their very improvement by helping to conceal their mental deficiency contributes to increased danger.

In order to meet this last condition which virtually defeats the purpose of our *one* institution, a bill for an act to better provide for the care and detention of feeble-minded persons has been presented to the present Assembly by the State Charities Commission, Dr. Edward Ochsner, president, and the Municipal Court of Chicago, Hon. Harry Olson, Chief Justice.

The act provides that feeble-minded persons of all ages, who are found to be without proper supervision and control, may be cared for in a state institution for the feeble-minded; that petition for an examination of such supposedly feeble-minded persons be made by any relative or reputable citizen to the circuit or county court or the superior court of Cook County, or the municipal court of Chicago; that examination of the mental state of the individual and of the social conditions be made by a commission appointed by the court; that the person if found to be feeble-minded, be sent to either a public or private institution for feeble-minded persons or remanded to guardianship at the discretion of the court; that discharge be allowed only after a re-examination by said court and then only if the person is found to be not feeble-minded or if the court is convinced that the parent or guardian will provide proper care elsewhere.

The act provides also that when any child is brought before a juvenile court for delinquency or dependency such court may, if convinced of the child's feeble-mindedness, adjourn the proceedings and order an investigation in feeble-mindedness; and also that when any person is convicted of a crime or misdemeanor by any court of record, if such court is convinced of the person's feeble-mindedness, sentence may be suspended and an inquiry in feeble-mindedness instituted, provided, that if by said inquiry or any future inquiry, the convicted person proves to be not feeble-minded, sentence be then imposed.

Professor Henry Schofield of the Northwestern University Law School cooperated with others in the preparation of the bill.

CLARA HARRISON TOWN, Chicago.

The bill as presented follows:

A Bill for an Act to better provide for the care and detention of Feeble-Minded Persons.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. The words "feeble-minded person" in this act shall be construed to mean any person afflicted with mental defectiveness from birth or from an early age, so pronounced that he is incapable of managing himself and his affairs, or of being taught to do so, and requires supervision, control and care for his own welfare, or for the welfare of others, or for the welfare of the community, who is not classifiable as an "insane person" within the meaning of "An act to revise the law in relation to the commitment and detention of lunatics, and to provide for the appointment and removal of conservators and to repeal certain acts therein named," approved June 21, 1893, in force July 1, 1893.

Sec. 2. From and after the taking effect of this act, no feeble-minded person shall be sent to any institution for the feeble-minded except as hereinafter provided.

Sec. 3. When any person residing in this State shall be supposed to be feeble-minded and by reason of such mental condition of feeble-mindedness and of social conditions, such as want of proper supervision, control, care and support, or other causes, it is unsafe and dangerous to his welfare, or to the welfare of others, or to the welfare of the community, for him to be at large without supervision, control and care, any relative, parent, guardian, conservator or friend of such supposed feeble-minded person, or any reputable citizen of the country in which such supposed feeble-minded person resides or is found, may file with the clerk of either the Circuit or of the Superior Court of Cook County, or of the County Court of the county in which such supposed feeble-minded person resides or is found, or with the Clerk of the Municipal Court of Chicago when the supposed feeble-minded person resides or is found in the City of Chicago, a petition in writing under oath setting forth that the person named is feeble-minded, and the facts and circumstances touching the social condition, such as want of proper supervision, control, care and support, or other causes, making it unsafe and dangerous to the welfare of the supposed feeble-minded person, to the welfare of others, and to the welfare of the community, for him to be at large without special supervision, control and care; also the names and residences, or that the same are unknown to the petitioners, of the persons actually supervising, caring for, or supporting the alleged feeble-minded person, and of the persons legally chargeable with his supervision, care or support; and the names and residences of the witnesses by whom the truth of the allegations contained in the petition may be proved, one of whom at least must be a qualified physician having personal knowledge of the case: *Provided,* that when it shall appear by such petition that the person alleged to be feeble-minded has not been examined by a physician, the judge may appoint a qualified physician of the county to make such examination and allow him compensation therefor, not exceeding five dollars, which shall be taxed and collected as is herein provided in respect to other costs. And the petition must be accompanied by sworn answers in writing by the petitioner to such interrogatories as may be propounded in a form to be prescribed by the Board of Administration. If the petition is not filed by a relative, guardian or conserva-

tor of the supposed feeble-minded person, it shall state the reasons why the petition is not filed by any relative, the guardian or conservator, and the connection of the petitioner with the supposed feeble-minded person, and the circumstances under which he files the petition.

Sec. 4. Upon the filing of a petition under this act, unless the person alleged to be feeble-minded shall be brought before the court without a writ, or unless an affidavit of some creditable person shall be filed setting forth facts and circumstances sufficient to satisfy the judge, it would be improper to have the alleged feeble-minded person brought before the court, the judge of the court shall direct the clerk to issue a writ directed to the person having the alleged feeble-minded person under his supervision and care; or to any other reputable person the judge in his discretion may select, or to the sheriff, or to any constable or bailiff, commanding that the alleged feeble-minded person be brought before the court at such time and place as the judge may appoint for the hearing and determination of the petition.

Sec. 5. In no case shall the hearing of the petition take place until the person alleged to be feeble-minded and those named in the petition as having actual supervision and care of the alleged feeble-minded person and one or more of those named in the petition legally chargeable with his supervision, care and support, shall have been notified and given an opportunity to be heard as the court shall direct.

Sec. 6. The hearing on the petition shall be by commission. The judge shall preside. And the hearing may be in open court or in chambers, or at such other place as the judge in his discretion may appoint. In any case where the person alleged to be feeble-minded is not represented by any person, the court in its discretion may appoint some suitable person to act in his behalf. And except as herein otherwise provided the rights of the alleged feeble-minded person shall be the same as a defendant in a civil suit. The judge may require all persons other than the petitioner, the feeble-minded person, one or more of his relatives and friends, the witnesses, the licensed attorneys engaged in the case, and the officers of the court, to withdraw during the hearing, but the presence of the feeble-minded person shall not be regarded as so indispensable that no proceedings may be had during his absence, if the judge thinks his absence proper and desirable.

Sec. 7. The Judge shall appoint a commission of two qualified physicians or one qualified physician and one qualified psychologist who are residents of the county to be selected by the judge on account of their known competency and integrity, who shall make a personal examination of the alleged feeble-minded person touching his mental condition and also shall inquire into the alleged social conditions such as want of proper supervision, control, care or support, or other causes making it unsafe and dangerous to the welfare of the alleged feeble-minded person, to the welfare of others, and to the welfare of the community, for him to be at large without supervision, control and care; and they shall file with the clerk of the court a report in writing, verified by affidavit, of the result of their examination of mental condition and social condition aforesaid setting forth their conclusions and recommendations. They also shall file with their said report answers to such interrogatories as may be propounded in a form to be prescribed by the Board of Administration, certifying that the answers are correct to the best of their knowledge and belief. The commission herein provided for shall have power to administer oaths and take sworn testimony under the supervision, direction and control of the judge.

Sec. 8. The court, if dissatisfied with the conclusions and recommendations of the commission, may set the same aside and dismiss the proceedings, or order a new hearing by the same or a new commission, or make new findings of facts and substitute such new findings of facts in the place of conclusions and recommendations of the commission, and on such review by the court of the conclusions and recommendations of the commission, the court may hear fresh evidence, if the court thinks fit.

Sec. 9. In accordance with the final conclusions of facts touching the mental condition and social conditions alleged in the petition, the court shall enter a proper order for the disposition of the person alleged to be feeble-minded. If the court is satisfied the alleged feeble-minded person is not feeble-minded, the order shall dismiss the petition and discharge the person. If the court is satisfied the alleged feeble-minded person is feeble-minded, and subject to be dealt with under this Act, the order may appoint a suitable person to be the guardian of the person of the feeble-minded person, or may direct that the feeble-minded person be sent to a private institution, qualified and licensed under the laws of the State to receive him, whose managers are willing to receive him; or may direct that he be placed in a public institution for the feeble-minded as seems best to the court, having regard to all the circumstances appearing on the hearing. the court's guiding and controlling thought throughout the proceedings to be the welfare of the feeble-minded person, the welfare of others and the welfare of the community. Whatever order may be made in the case shall stand and continue to be binding upon all persons whom it may concern until rescinded, reversed or otherwise regularly superseded or set aside.

Sec. 10. An order that the feeble-minded person be placed under guardianship shall confer on the person named in the order as guardian such powers, subject to the regulations of the Board of Administration, as would have been exercisable if he had been the father of the feeble-minded, and the feeble-minded had been under the age of fourteen.

Sec. 11. Where an order has been made that a feeble-minded person be placed under guardianship, the guardian may be removed by the court that appointed him, on the application of the feeble-minded person, or of any relative or friend of the feeble-minded person, or of any reputable citizen or of the Board of Administration; and when the guardian dies, resigns, or is removed, the court may, on a like application, appoint a suitable person to act in his stead. And on application of the guardian, or of the feeble-minded person, or of any relative or friend of the feeble-minded person, or of any reputable citizen, or of the Board of Administration, the court that appointed the guardian, on being satisfied that the case is, or has become one unsuitable for guardianship, may order that the feeble-minded person be discharged from guardianship and set free, or be sent to a private institution qualified and licensed under the laws of the state to receive him, whose managers are willing to receive him, or be sent to a public institution for the feeble-minded, as seems best to the court, having regard to all the circumstances appearing on the hearing. No order shall be made discharging or varying a prior order placing the feeble-minded person under guardianship without giving one or more of the relatives or friends of the feeble-minded person, his guardian and the Board of Administration notice and an opportunity to be heard.

Sec. 12. Upon the entry of an order directing that a feeble-minded person be sent to an institution for feeble-minded persons, the clerk of the court shall

send a copy of the order to the superintendent of the institution to which such feeble-minded person is ordered to be sent, and such superintendent shall receive such feeble-minded person as a charge in such institution: *Provided,* that, if on account of the crowded condition of a public institution it is impossible to accommodate such feeble-minded person, the superintendent shall inform the court with the promise that the court be notified at once when the next vacancy occurs, and that such feeble-minded be then received as a charge in such public institution.

Sec. 13. For the conveyance of any feeble-minded person to any public or private institution for the feeble-minded, the admission thereto having been ordered by the court as herein provided, the clerk shall issue a warrant in duplicate directed to the petitioner or to some suitable reputable person as the judge may select, commanding him to take such feeble-minded person and deliver him to the superintendent of the institution. When the judge thinks necessary, he may direct the clerk to authorize the employment of one or more assistants, but no female feeble-minded person shall be taken to the institution by any male person not her husband, father, brother or son without the attendance of some woman of good character and mature age chosen for the purpose by the judge. Upon receiving the feeble-minded person, the superintendent of the institution shall endorse upon the warrant his receipt, naming the person or persons from whom the feeble-minded person is received, and one copy of the warrant so endorsed shall be returned to the clerk of the court to be filed with the other papers in the case and the other shall be left with the superintendent and the person delivering the feeble-minded person shall endorse thereon that he has so delivered him, and said duplicate warrant shall be *prima facie* evidence of the facts set forth therein and in said endorsement.

Sec. 14. No feeble-minded person admitted to an institution for the feeble-minded pursuant to an order of court as herein provided shall be discharged therefrom except as herein provided, except that nothing herein contained shall abridge the right of petition for the writ of *habeas corpus.* At any time after the admission of the feeble-minded person to an institution for the feeble-minded, pursuant to an order of court as herein provided, the feeble-minded person or any of the relatives or friends of the feeble-minded person, or any reputable citizen, or the superintendent of the institution having the feeble-minded person in charge, or the Board of Administration, may petition the court that entered the order of admission to discharge the feeble-minded person or to vary the order of the court sending the feeble-minded person to an institution. If, on the hearing of the petition, the court is satisfied that the welfare of the feeble-minded person, or the welfare of others, or the welfare of the community requires his discharge or a variation of the order, the court may enter such order of discharge or variation, as the court thinks proper. Discharges and variations of order may be made for either of the following causes: because the person adjudged to be feeble-minded is not feeble-minded; because he has so far improved as to be capable of caring for himself; because the relatives or friends of the feeble-minded person are able and willing to supervise, control, care for and support him and request his discharge, and in the judgment of the superintendent of the institution having the person in charge, no evil consequences are likely to follow such discharge; but the enumeration of grounds of discharge or variation herein shall not exclude other grounds of discharge or variation which the court, in its discretion, may deem adequate, having due regard for the welfare of the person concerned or the welfare of

others or the welfare of the community. On any petition of discharge or variation, the court may discharge the feeble-minded person from all supervision, control and care, or may place him under guardianship, or may transfer him from a private institution to a public institution, or from a public institution to a private institution, as the court thinks fit under all the circumstances appearing on the hearing of the petition. The superintendent of the institution having the feeble-minded person in charge must be notified of the time and place of hearing on any petition for discharge or variation, as the court shall direct, and no order of discharge or variation shall be entered without giving such superintendent a reasonable opportunity to be heard; and the court may notify such other persons, relatives and friends of the feeble-minded person as the court may think proper of the time and place of the hearing on any petition for discharge or variation of prior order. The denial of one petition for discharge shall be no bar to another on the same or different grounds within a reasonable time thereafter, such reasonable time to be determined by the court in its discretion, discouraging frequent, repeated, frivolous, ill-founded petitions for discharge or variation of prior order. On reception of a feeble-minded person in an institution pursuant to an order of the court under this Act, the superintendent of the institution, under regulations of the Board of Administration, shall cause the feeble-minded person to be examined touching his mental condition, and if upon such examination it is found the person is not feeble-minded, it shall be the duty of the superintendent to petition the court for a discharge or variation of the order sending him to the institution. Any person sent to an institution pursuant to an order of court under this Act shall have the right to at least one hearing on a petition for discharge or variation within one year after the date of the order sending him to the institution.

Sec. 15. Every person admitted to any institution for the feeble-minded shall have all reasonable opportunity and facility for communication with his friends and be permitted to write and send letters, providing they contain nothing of an immoral or personally offensive character and letters written by any charge to any member of the Board of Administration or to any member of the State Charities Commission, or to any state or county officials shall be forwarded unopened. But no leave of absence shall be granted except for good cause to be determined and approved by the board of administration in each case who shall take appropriate measures to secure the feeble-minded person proper supervision, control and care during such leave of absence, and no leave of absence shall be for a longer period than two weeks.

Sec. 16. In the event of a sudden or mysterious death of a charge of any state or private institution for the feeble-minded, a coroner's inquest shall be held as provided by law in other cases. Notice of the death of such person and the cause thereof shall in all cases be sent to the judge of the court having jurisdiction over such person, and the fact of the death with the time and place and alleged cause shall be entered upon the docket.

Sec. 17. Any person who shall knowingly contrive or who shall conspire to commit any person to an institution for the feeble-minded unlawfully and improperly, or any person who shall violate any provision of this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not exceeding $1,000, or imprisoned not exceeding one year, or both, at the discretion of the court in which such conviction is had.

Sec. 18. The cost of proceedings in feeble-mindedness shall be defrayed

from the county treasury, unless otherwise ordered by the court as herein provided. But when, on the hearing of the petition, the person alleged to be feeble-minded is found not to be feeble-minded, the court in its discretion may require that the costs shall be paid by the person who filed the petition and may render judgment against him therefor, except that no judgment for costs shall be rendered against the petitioner who filed the petition pursuant to the direction of a court as provided in sections 4 and 5. The fees paid for attendance of witnesses and execution of legal process shall be the same as are allowed by law for similar services in other cases. For services as commissioner, the sum of $5.00 per day and the actual and necessary traveling expenses shall be allowed to each person so employed. But when the proceedings are instituted in the court of any county of which the alleged feeble-minded person is not a resident, in case a judgment for costs is not rendered against the petitioner as above provided, the judge of the County Court of the county in which said alleged feeble-minded person resides, shall be furnished with a transcript of the record and findings in the case and thereupon the said county shall be liable for the costs of the proceedings.

Sec. 19. Where an order that a feeble-minded person be placed under guardianship, or be sent to a private or public institution, is made under this act, the court entering the order, or any court having jurisdiction under this act, may at any time, on the application of the petitioner, or of the guardian, or of the managers of the institution, or of the Board of Administration, as the case may be, make an order requiring the feeble-minded person, or any person liable or undertaking to maintain him, to contribute such sums towards the expense of his guardianship, or of his maintenance in the institution, and any charges incidental thereto, including the costs of the proceedings in feeble-mindedness, of his conveyance to the institution, and in the event of his death in the institution his funeral expenses, as seems reasonable, having regard to the ability of the feeble-minded person, or of the person liable or undertaking to maintain him. Any such order may be enforced against any property of the feeble-minded person, or of the person liable or undertaking to maintain him, in the same way as if it were a judgment or decree for temporary alimony in a divorce case. When a conservator of the estate of the feeble-minded person under guardianship, or in an institution under this Act, has been, or is appointed pursuant to "An Act to revise the law in relation to idiots, lunatics, drunkards and spendthrifts," approved March 26, 1874, in force July 1, 1874, any such order for contribution to maintenance may be made and enforced against such conservator.

Sec. 20. When a child is brought before a "Juvenile" court as a dependent or delinquent child, if it appears to the court, on medical evidence, that such person or child is feeble-minded within the meaning of this Act, the court may adjourn the proceedings and direct some suitable officer of the court or other suitable reputable person to file a petition under this Act; and the court may order that pending the preparation, filing and hearing of such petition, the person or child be detained in a place of safety, or be placed under the guardianship of some suitable person on that person entering into a recognizance for his appearance.

Sec. 21. On the conviction by a court of record of competent jurisdiction of any person of any crime, misdemeanor, or any violation of any ordinance which is in whole, or in part, a violation of any statute of this state; or any child brought before a Juvenile Court for any delinquency, being found liable

to be sent to a reformatory school, a training school, or an industrial school, the court, if satisfied on medical evidence the person or child is feeble-minded within the meaning of this Act, may suspend sentence, or making an order sending the child to a reformatory, training or industrial school, and direct that a petition be filed under this Act. Where the court directs a petition to be filed, it may order that pending the preparation, filing and hearing of the petition, the person or child be detained in a place of safety, or be placed under the guardianship of any suitable person on that person entering into a recognizance for his appearance. If upon the hearing of said petition or upon any subsequent hearing under this Act the person is found not to be feeble-minded the court shall impose sentence.

Sec. 22. When the mental condition of a person under guardianship or in an institution for feeble-minded persons, pursuant to an order of court under this Act, becomes or is found to be such that he ought to be transferred to an institution for lunatics, the guardian or managers of the institution, or the Board of Administration, as the case may be, shall cause such steps to be taken as may be necessary for his removal to an institution for lunatics under "An Act to revise the law in relation to the commitment and detention of lnnatics and to provide for the appointment and removal of conservators, and to repeal certain acts therein named," approved January 21, 1893, in force July 1, 1893. And when the mental condition of a person in an institution for lunatics ,under such lunacy act of 1893 becomes, or is found to be such that he ought to be transferred to an institution for feeble-minded persons, or placed under guardianship under this Act, the managers of the institution for lunatics, or the Board of Administration, may cause such steps to be taken as may be necessary for having an order that he be sent to an institution for feeble-minded, or placed under guardianship under this Act.

Sec. 23. No person shall be discharged from a public institution for the feeble-minded without suitable clothing and a sum of money not exceeding $20 sufficient to defray his expenses home, which shall be charged to the county in which the person resides, and collected as other debts due the institution are collected. But the court ordering the discharge may dispense with this requirement if the court in its discretion thinks it fit and proper under the circumstances.

Sec. 24. If any feeble-minded person shall escape from an institution for the feeble-minded, it shall be the duty of the superintendent of the institution and his assistants and of any sheriff or constable, or other officer of the peace in any county in which he may be found to take and detain him without a warrant and report the same at once to the County Judge of said county who shall return him to the institution at the expense of the county from which he was admitted.

Sec. 25. Each Court having jurisdiction under this Act shall keep a separate docket of proceedings in feeble-mindedness upon which shall be made such entries as will together with the papers filed preserve a complete and perfect record of each case, the original petitions, writs, and returns made thereto, and the reports of commissions shall be filed with the Clerk of the Court.

Sec. 26. The board of administration shall keep a record of all persons adjudged to be feeble-minded and of the orders respecting them by the courts throughout the state, copies of which orders shall be furnished by the clerk of the court without the board's application or upon the board's application.

Sec. 27. The invalidity of any part of this act shall not be construed to

affect the validity of any other part capable of having practical operation and effect without the invalid part.

Sec. 28. All acts and parts of acts inconsistent with this act are hereby repealed. R. H. G.

Louisiana Criminal Law.—"While it is matter of general knowledge among lawyers that the state of Louisiana has a system of civil jurisprudence based upon the continental, as distinguished from the common law, the peculiar features of its criminal law are not so widely understood. The criminal system is based upon and controlled by the common law, with numerous constitutional and statutory variations.

"The first salient feature striking the observation of the practitioner is that there is no appellate jurisdiction of the evidence. Unless the trial court grants a new trial, there is no relief for any lack of evidence to convict. If the state is reasonably careful to avoid manifest error of law, there is no help after the action of the jury and judge in the trial court.

"Another and possibly more surprising modification is found in art. 116 of the constitution, prohibiting the trial by jury in all cases which are not punishable by imprisonment at hard labor, but with a proviso that this may be changed by the legislature. Strange to say, this article has been in effect without such change for sixteen years. Evidently the Louisiana plebiscite is not trained to look upon the jury as the 'Palladium of our Liberties.'

"And there is not only no jury in such cases, but by art. 85 of the same instrument, jurisdiction of appeal is limited in these cases to judgments imposing a fine of more than $300, or imprisonment of more than six months. Up to this point, then, the trial judge is sole arbiter of the fates and fortunes of his fellows. This is a departure from the law of Moses, 'Be not a sole judge, for there is no sole Judge but One.'

"To sum up, there are a considerable number of misdemeanors in which there is neither jury trial nor appeal, and in all appeal cases, regardless of the sentence imposed, the appellate jurisdiction is limited strictly to questions of law, and insufficiency of evidence is not ground for reversal.

"An extraordinary statute in the extreme nature of its penalty is the 'Age of Consent' law, being act No. 84 of 1908; by which it is possible for a boy seventeen years and one day old to be imprisoned for five years at hard labor for intimacy with a girl a year older than himself, omitting the one day, the respective ages being fixed at seventeen and eighteen years. This statute seems to ignore the usual maxim that a girl of eighteen is far more mature than a boy of the same age, and certainly far more so than a boy who is a year her junior. The legislators also seem to have differed from the view that in warm climates the female matures much earlier than in colder and more rigorous climes. This law in its present form is one of the fruits of modern feminism. Just why the joint act of the eighteen-year-old girl and the seventeen-year-old boy should be a felony for the younger and a harmless pastime for the elder is not explained.

"Another feature of the constitutional provisions, tending to real progress and orderly administration, is contained in art. 9 of the constitution, permitting a second trial of the accused, where a motion in arrest of judgment is sustained. This is a reasonable rule, making for justice, but taking the sum of the criminal statutes, it may be said that the way of the transgressor is hard.

"There is a strict statute relating to misprision of crimes, making it a very serious offense merely to fail to give information of a known offense.

"The unanimous verdict of twelve jurors is only required in capital cases, as provided by art. 116 of the constitution, while in cases in which the punishment is not necessarily at hard labor, the jury consists of only five members." —A. D. Preston of the W. Va. and La. Bar in *The Lawyer and Banker,* April, 1915, pp. 124-125.

The New Jersey Law Journal on the Public Defender.—"The subject of a 'Public Defender,' to be an official created by law and appointed in each county by the Governor of the state, and practically to represent both the state and those criminal defendants who are unable to procure their own counsel, is gaining ground in different parts of the Union. Such a bill, we believe, has been introduced in our own state legislature, although we have not seen the text of the same. An article in the November number of *Case and Comment,* by Mr. Mayer C. Goldman of the New York Bar puts in excellent shape the argument for the Public Defender. He contends that the following benefits, among others, would accrue from such appointments: '1. That the rights of defendants in criminal cases would be better preserved. 2. That their cases would be more honestly and ably presented. 3. That there would be fewer unscrupulous and perjured defenses. 4. That our prisoners, poor or rich, would be placed upon a true equality before the law. 5. That the truth in any trial could be more satisfactorily established. 6. That there would be less opportunity for disreputable attorneys to obtain delays in the trial of cases, in order to extract fees from an unfortunate defendant, or from his relatives or friends. 7. That the trials in criminal cases would be expedited. 8. That there would be fewer pleas of "guilty" by prisoners, at the instigation of attorneys who do not care to be burdened with trials in cases where they receive no fee. 9. And that the tone of the criminal bar and of the criminal courts would be uplifted.' In at least one respect Mr. Goldman is very conservative in his article. He says: 'I do not now advocate the establishment of such office in the smaller communities—at least not until a successful administration of the office in the larger and more populous counties justifies its creation generally.' This really means that, in states where the proposition is a new and untried one, there should be first an experiment, in the most populous counties only, so that the public may become convinced that sufficient good is to result from a Public Defender to warrant the expenditure of the public funds for such a purpose. This, we presume, is how it should start in New Jersey, although it is needless to say that, if it be a proper and wise thing to create such an office, it is quite as important that those under arrest in the smaller and rural counties should have their rights preserved as in the larger counties. It is a fact that the majority of persons indicted by the grand jury are without means; perhaps their very poverty has incited them to crime; and this poverty precludes their engaging trained lawyers for their defense. That some of them plead guilty because they are unable to secure legal defense, may also be true, but we think it is quite as true that, under all the circumstances, whether they secure a lawyer for a small fee, or whether the lawyer looking after their interests is appointed by the Court, there is often that just (and only just) defense put up in their behalf as is contemplated by the law. The questions involved in the whole matter are pretty large ones, and we are glad to see that the discussion in the various legal journals, including the JOURNAL OF CRIMINAL

LAW AND CRIMINOLOGY of Chicago, which is the best criminal law publication of which we have any knowledge, is conducted only upon a high plane and with perfect candor."—From *The New Jersey Law Journal,* March, 1915.

Girls in the New York Night Courts.—There has been an attempt made to some extent at specialization in New York City. We have a Woman's Night Court which convenes at 8 p. m. every night in the year, and adjourns at 1 a. m. In this court nearly every woman arrested in New York City is tried; and every woman who is arrested as an offender of the social evil goes through this court.

I am present at every session, and therefore am brought in contact with most all the women who go through the New York Courts.

During the past year we have had under our special supervision 450 girls from the courts, and have made the investigations and recommendations. The charges against them have ranged all the way from peddling chewing gum without a license to attempted murder.

We have had runaway girls to capture, to care for and return safely to their homes; we have had the ungovernable child—the little girl who associates with bad companions, keeps late hours and is in danger of becoming morally depraved unless taken under the care and supervision of someone; we have had the lost girl and the homeless girl, who only needed care and protection; but the greatest number has been the street girl and the so-called white slaves. Most of them have been very young. Out of 450 girls, 289 of them were not older than 18 years; while 116 of them were only 16 years of age.

When the girls are arrested and brought into court, the first one who appears for them is the professional bondsman, who charges a double price; and following him comes the underworld lawyer, and he also charges a double price. These men are often sent by the cadet who is living from the proceeds of her body and soul; and she who sells her body and soul, stands before the bar of justice and has the penalty of the law dealt out to her, while the lawyer, bondsman and cadet live without work on her commercialized vice.

When she is convicted in court, she is finger-printed, and through the finger-print system the judge can tell whether there is any previous record or whether she is a first offender; and the judges of the Night Court are conscientious men who are ever on the alert for first offenders, many of whom are paroled to the home. Our aim is not only to care for her and re-establish her in right living, but also, to bring to justice the white slaver.

I suppose one natural question is, "How do so many girls fall into the hands of the white slaver?" The story of the locked door and closed window is largely imaginary; at least, it is very much exaggerated. From my personal experience with this class of people I positively know that no so-called white slaver could, or would hold any of his victims by the means of locked doors or closed windows for any length of time. That is not their method.

The man who lives on commercialized vice is the man you see standing on street corners; he spots his victim, who is usually a silly little girl; he knows her by her mannerism and dress. He may take a very sensibly dressed girl but he always throws out a little test, and he soon knows whether she will take the bait or not. He sometimes keeps company with her for months, and if she is a perfectly good girl he accomplishes her ruin first himself: for the first day or two after he has put her in a room or house, he may have the doors locked, or have her carefully watched. I have had many cases in court where the

evidence did show the doors were closed; but I never had but one case where the girl made any particularly strenuous effort to get away.

The girl whom the cadet can enslave soul, mind and body, is worse than any physical slave. When I see these unfortunate creatures on the street, and realize that through some hideous influence they have taken their beautiful locks of black or brown hair and saturated them with peroxide until they are bleached; have painted their cheeks and penciled their eyebrows, and that their minds are so polluted that when they look at themselves they think they have improved themselves. I ask, "What slavery in all the world could be worse than this?"

The most perplexing and serious problem to all who are dealing with the social evil is not so much the white slave, as the problem of commercialized vice. All are asking the question, "Why will these girls sacrifice body and soul for money they neither want nor need themselves, simply to give to another?"

Not long ago, I was called up by the district attorney's office to help in an investigation; the man in question was colored. We found there were 45 young girls—some as young as 14 years of age—who were secretly living immoral lives and giving their money to this colored man. He pleaded guilty before Judge Wadhams, and was sentenced to seven years in state's prison.

In talking to a girl the other day, it was easy to see the steps they take; she had known the man for months; he then coaxed her to his room, accomplished her ruin, then told her she was ruined and he would marry her and save her name, but that he needed money before he could marry her. Then he began to coax the girl to commercialize herself and she soon became the victim of the so-called white slaver, until the strong arm of the law put a stop to his career, for he is now in the Tombs prison awaiting trial.

The Rockefeller investigation did disclose the fact that there is not an existing organization of white slavers, but there is a system, and they do have a system among themselves through which they do carry on the evil.

Not long ago two girls who were distant cousins—two beautiful peasant girls—left their homes in Hungary to come to America, and there must have been a plot to victimize them before they left their homeland. Strange to say they came over on the boat together and they were very distant relatives; they separated at Ellis Island and met in the same disorderly house. Different methods were used for each one, but the evidence in court was very clear that the plans were all worked out by the same persons and parties. One of them was led into a terrible marriage to a white slaver, the other was trapped through an employment agency. The house where they were was run by a Mr. and Mrs. Ferenzy. Mrs. Ferenzy secured the two girls, and kept them. Mr. Ferenzy, who was a barber in one of the most reputable and largest hotels in New York City, was even bold enough to have printed cards that he could slip into the hands of the men after he shaved them, and thus he would secure the customers. This man and wife had carried on this traffic for several years with girls, and not only had money in America but in several foreign banks. They did their work very cleverly but this was a case when the detectives, and our investigation proved to be as clever as they, and step by step we unveiled the evil, obtained the evidence, and sent Mrs. Ferenzy, who was the leader in this evil to ten years in Auburn, and Mr. Ferenzy to seven years in Sing Sing.

One mistress of a disorderly house secured her girls by the following methods; she had a blind father, and a paralytic mother, and the paralytic

mother used to get foreign girls from an employment agency, and then the daughter would take them down to her house, and the mother would get another girl.

Investigation later developed that the poor blind father and paralytic mother did not know what their daughter was doing. They thought their daughter was conducting a business of making artificial flowers, and taking the girls to the factory, so the mother would let the girls go and secure a new one from an employment agency, who, in turn, would be a new recruit for her daughter's disorderly house. The woman was convicted and sent to the penitentiary, and a number of the girls were returned to their own homes.

We are often asked the question, "What is the type of girl who gets into this sort of trouble, and what are the underlying causes?" Is the legislature responsible for it, or is it home conditions? I can speak alone for the state of New York. I do not believe it would be possible to have better or stronger laws than we have on the statutes of New York. We do not need any better laws. It is easy enough to get this class convicted, and you will be satisfied with the sentences when I tell you they range from one to forty years.

The thing there is most need for in New York is workers—people who make a specialty of fighting commercialized vice, assisting the police in getting the evidence, preparing the cases, and more work in the homes.

Home conditions are more responsible for girls going wrong than any one other thing. There is much talk about the girl who can't live on the low wages she earns; they tell you she can't pay board, room rent, etc., for the wages she earns in stores and factories; but our statistics show that the larger number of girls who go wrong are not the girls who are alone in the world, nor the wage earners. Out of 436 girls last year, 263 of them came from their own home; more than 100 were domestics, and came from someone else's home, which left less than 100 who were earning their own living, paying room rent and board. The low wages of fathers and wage earners may cripple the education and training of children, but the low wages of girls has very little to do with the social evil. The girls come to us from all stations and all conditions of life; from the slum class of the lower East Side; the opium dens of Chinatown, and from the brown stone front of Riverside Drive.

I am satisfied that crime leads to poverty, but I am not satisfied that poverty is the cause of crime. In my experience in most of the cases that we handle the minds are polluted in early childhood. The most horrible things I ever listened to was, the number of girls who told me how they were bad even when they were little girls, and how bad they can get without their mother or nearest relatives knowing anything about it. The court experience these girls have is a great blessing to them; it often brings to light and to an end, an immoral career they have been practicing since childhood, and thus the law provides for them a new chance, and not only gives them a new start but often leads to the arrest and conviction of the men who are responsible for their ruin.

There is no doubt that men control the social evil. White slave traffic would not be so profitable if there were not such a demand. Men must be responsible for the profit there is in the traffic in girls. One of the judges said that 90 per cent of the cases he has sentenced of men convicted for white slavery are under 22 years of age. All these men are young—who was responsible for their beginning?—From *The Light,* March-April, 1915. By Margaret Luther, Superintendent Florence Crittenden Home, New York City.

An Italian Jurist on the Conditional Sentence.—In *Il Progresso del Diritto Criminale* for Nov.-Dec., 1914, Baldassarre Cocurullo has an article on *Questioni sulla condanna condizionale.* He asks several questions:

(1) Whether a conditional sentence can be given to an accused, who only appears before the court by counsel?

This question is answered in the affirmative, upon a construction of the CPP, which only limits the court's powers in that regard to those who have *appeared.* It seems to us, however, that this contention must be correct; yet the court, that conditional sentence being discretionary, should be very loath to grant it to a defendant guilty of *contumacia* or *assenza voluntaria.*

(2) Whether a conditional sentence can be given upon rehabilitation or pardon?

There was a doubt as to this under the old code, but the new code (Arts. 423, 426) removes the doubt providing that the concession can be made but once whether rehabilitation intervenes or not and that it can not be granted to any one, unless there is no condemnation of record against him.

(3) Whether a conditional sentence must be accompanied by the minimum penalty?

Although there have been arguments made in favor of an affirmative answer, it seems clear that there is no connection between the ideas. The gravity of the offense determines one, and the possibility of the delinquent's social amelioration the other. Judge Cocurullo writes: "It cannot be doubted that the minimum penalty may be inflicted without suspension and, vice versa, that a relatively heavy punishment may be given and suspended." J. L.

Penal Legislation in Colonies.— *Il Progresso del Diritto Criminale* for Nov.-Dec., 1914, contains an article, by Alimena, on *La ligislazione penale della colonie.* Although Alimena uses the word colony to include, Asian, Polynesian and African colonies, and although the attention is particularly drawn to the semi-civilized countries, its opening paragraphs we will quote at length because of their remarkable applicability to legislation in America, a new country.

"In a work of my youth and in a publication of my maturity, I have attempted to give a theory of the phenomenon of legislation and tried to show that human laws have a juridical, social and natural history.

"Although, therefore, a law, taken by itself can seem and be the result of a single event or of an individual or collective will, still all the laws taken in their complex interdevelopment, are the product of a law superior and extrinsic to us; they are the result of necessity.

"We cannot repeat in this essay all that we have given in detail elsewhere. But we can summarize it in saying that we have spoken of legislative statics and legislative dynamics. By the former, the legislator photographs the conditions of the juridical consciousness of a people in a given moment. Through the latter, the juridical consciousness of a people strains to work a higher type of life and greets ideality. In the former alone, there is no progress, only in the latter is there found a law without basis in reality; and the genius of the legislator is shown in the harmonic co-ordination of the two divisions.

"This clear and tangible purpose appears a *fortiori* in colonies, where two civilizations come into contact.

"Of course colonization may be destructive and substitutive, but it also

may respect the national type. And, in either case, it must be admitted, all colonies tend towards greater freedom, even to the greatest complete independence.

"Now, to give a simple and direct solution. We must conclude that colonial legislation must permit the development of the spirit of a people, destined to become sovereign, but only within the limits fixed by the requirement of public order and *bonos mores;* that is, as it is said, up to the point where it comes in opposition to the other civilization.

"And within such limits, the juridical material, whose development is entitled to respect, is strong and virile in relation with the strength of the colonial race, and with its religious convictions, and the maturity of its civilization."

Their principle of this summary should be applied and has been largely applied, in America in forcing foreign laws and institutions of our races upon immigrants from another, but it has rarely been more accurately and concisely stated; and we have thus quoted it at length in our firm belief that a categorical recognition of a principle, no matter how generally applied in practice, is necessary not only as a logical training, but also in order to avoid practical mistakes.

Alimena takes some specific crimes, slavery and piracy (generally committed by others than the colonists), anthropophagy (rapidly disappearing because cannibals are unfitted for colonial life); infanticide and abortion (these, too, disappearing in the original form); suicide (which is a crime only by English law, not even in countries of close kindred to it, the United States [generally] or in Scotland); polygamy and offenses against decency.

From the point of view of the old countries: England has codes for different colonies. But it may be noted that Uganda is governed "so far as circumstances permit" by the Indian Code. French law follows the flag. The Germans impose their laws on colonists, with special enactment of a German type, for colored races. Spanish law controlled Spanish colonial possessions. Portugal followed the Spanish example, except in Mozambique, which, since 1812 has a code of procedure. Belgium and Holland have no special laws, but adapt their own codes. As to Denmark, Iceland has its own code, very similar to the Danish; Greenland and the Antilles are governed by the law of the mother country. Russian colonies are subject to Russian law, except Finland, although the Siberian tribes are governed by their own customs and the exiles have special regulations. Hawaii preserved its law of 1850, but the Spanish law was abolished in the Philippines in 1910 by G. O. 59.

The question of laws for civilized colonies, that is coordinately civilized with the mother country, is easy—a new code can be made. But where there are two civilizations, insurmountable difficulties at once arise, for the peoples cannot be made one, save by the effluxion of ages, but remain as Tacitus said *"ignoti inter, diversis, manipolis, sine rectore, sine affectibus mutuis, quasi ex alio genere mortalium in unum collecti."* The question of the solution of these difficulties does not include the juridical government of such places, as the Chinese settlements, Turkish "capitalizations," or lands temporarily occupied and permanent in another have to be formed. Racial prejudices have to be accepted and laws made to meet the facts as elsewhere. Whether the legislator understands a fact or not, he must give it recognition.

England has given Egypt mixed courts, with appropriate codes. This is the second stage, the first being that of military justice.

In Eretria, the Italian law governs Italians (assimilated) natives. For foreigners (unassimilated natives), foreign law, the Musselman code, the Fettia-Nagest and the Fettia-Mogareb, together with other traditions and customs control "in so far as is compatible with the spirit of Italian legislation and civilization." This is a further step towards the third stage, than is shown by Egypt. In this last or third stage, there is but one system and the racial differences have sunk to the grade of class distinctions. The colony is then a homogeneity, even if a heterogeneous one.

It is interesting to note a trace of the old Lombard laws, of Rotharis, Luitgold and Pepin, in the Eretrian law of today, for Article XII provides that in a suit between Italian subjects and others, "the Italian law shall prevail, when more favorable to either Italian citizen or foreigner."

Somali-land follows the same system, but has not reached the same stage of development. The native can renounce his law in order to take advantage of the Italian. Sentences can be imposed upon whole villages, thus recognizing the survival of collective punishment.

The Italian Code is applied in Libia, with modification, but this law does not show the existence of the third stage of colonial legislation, but marks the beginning of the second.

In conclusion, Alimena believes in individualized, even elastic penalties, *propter peccatum non re peccatur*. He disbelieves in the institution of capital punishments in lands where they have been unknown. He thinks that the system to be adopted is a gradual Italianization of local customs, and with especial regard to the criminal side of law, for it develops quicker than the civil. J. L.

Embezzlement and Loss of Franchise in Italy.—*Il Progresso del Diritto Criminale,* in the May and June number of the year 1914, contains two articles, the first entitled "Elettorato ed Elegibilita," and the second by Ubaldo Pergola—"I vecchi e i nuovi peculatori di fronte alla vigente legge elettorale politica."

The first reviews the decision of the Supreme Court holding that a man named Nasi, who had been found guilty and condemned under the code of 1895, could not be deprived of his right to vote under the provisions of the new law, which added the loss of franchise (temporary or permanent, as the case might be) to the other penalty for the crime.

Ubaldo Pergola takes up this decision in detail and finds nothing which can justify the decision of the court. It is thought that the court was influenced by popular feeling and the immediate justice of the case. So, criticizing the decision, Pergola takes up several interesting arguments, upon which the court relied, in coming to the decision which it handed down.

The question is the complicated one of inflicting the penalty under a new law for a crime committed under the old. Pergola would solve it simply, however, by basing his answer not on the retroactivity or non-retroactivity of the new statute, but by the ruling of the statute itself, which provides that condemnation for the crime of *peculato* shall not entail loss of franchise. In other words, he believes that not the act of embezzlement, but the fact of condemnation is the cause of the loss of the right. This is patently untenable, however; the act may be badly worded, but the act of continuation is used elliptically, in order to prepare the way for rehabilitation by pardon.

Pergola summarizes the decision of the Supreme Court as follows:

"(1) The chief and principal argument of the Supreme Court was implicitly taken from Article 2 of the Penal Code and may be outlined as follows:

"(a) The loss of the quality of elector and of eligibility for election is, in fact, a punishment.

"(b) But this penalty was not imposed by the political electoral law of 1895, under whose duration the crime was committed.

"(c) The new penalty imposed by Article 113, Section 7, of the new law, cannot therefore be applied.

"(2) The second and subordinate argument is based, on the other hand, on Article 2 of the former Civil Code and may be outlined as follows:

"(a) The quality of elector and of eligibility is an individual political right which belongs to citizens in their own right, revindicated by the revolutions, and is in no wise derived by legal grant. The statute itself merely recognizes a right which already belonged to the citizen.

"(b) It is, therefore, susceptive of perfect irrevocable acquisition as all private property rights.

"(c) The new law, which limits the exercise of the franchise, can be of no force in regard to existing electors, especially when it is not expressly retroactive."

Pergola takes up these propositions in detail and finds them all faulty. The franchise he does not believe to be a private right, but considers it a public duty and although men of the Eighteenth and Nineteenth Centuries, especially at the beginning of the French Revolution, because of the theories of the School of Natural Law and the atomistic theory of popular sovereignty, which looked upon suffrage as a quota of sovereignty, may have believed that the right to vote was a private right, still later and more scientific study has shown that it is only a public duty; otherwise every vote, and not the majority of votes, would have to have some weight. But even while it may be said that the philosophers, contemporary with the French Revolution, believed that the right to vote was a private right and while there are many statements to that effect, it still may be doubted whether they carried their theory to its legitimate conclusion. For example, they claimed that sovereignty belonged to the people, not to the individual.

Furthermore, if the franchise was a private right it could never be altered.

The article is replete with subtleties, but the *non-sequitur* seems to lie in the fact that even if the right to vote is not an individual and property right its loss can be considered a penalty; admitting that it is a penalty it, of course, cannot be retroactive, but this brings us to the second difficulty. If this is a provision of the criminal law and is, therefore, not retroactive, it cannot, of course, apply to the condemnation under the Act of 1895. This is not true, however, if it appears that it can follow the condemnation under the new law for a crime committed prior to its enactment upon any theory that it is a result of the condemnation and not a result of the crime. But this cannot seriously be considered in the face of the apparent intent of the act not to make the condemnation the cause of the disability, but merely to make the condemnation sufficient proof of the commission of the crime to entail the penalty.

There can be no doubt that the theory that the loss of a public duty and political rights can be a punishment, the theory upon which both the Supreme Court and the writer of a criticism of its decision based their argument, viz.: That the loss of the right to vote would not be a penalty unless it is a private

right, cannot be sustained. A man may be deprived of a public duty for the good of others (and this is the basis of electoral disabilities) or he may be punished by such a deprivation. This theory has been recognized in criminal law from the earliest times and is the basis of the so-called infamous punishments.

While the reasoning of the Supreme Court and of Pergola may not appeal to the majority of American readers the articles in *Il Progresso del Diritto Criminale* should, however, be read by all who are interested in the conflict of criminal with civil and public law. J. L.

Article 40 of the Italian Code.—Hon. Erico Romano di Falco, in *Il Progresso del Diritto Criminale* (Sept.-Oct., 1914), attacks Article 40 of the new Italian code of criminal procedure on the ground that its provision that no judge who has given sentence in a proceeding can participate in the same proceeding in its later stages. He claims that the wording of such a provision includes much more than it was intended to cover. It prevents a case being sent back to a judge by a court of appeals; it prevents a judge from continuing in a case from beginning to end, even while the case remains in his court.

The article, as we have said of so many written by Italian legal philosophers, shows on one hand a pettiness of which the Holy Trinity Church case shows the proper solution, but, on the other hand, it shows a law-abiding attitude which cannot be too strongly recommended. It must come if we are to be a great juridicial nature. The swing of the pendulum away from the pettifogging lawyer has gone too far. J. L.

Prof. Masucci on the Defense of an Absent Defendant.—Prof. Luigi Masucci has an article entitled *"La Lipesa dell'impulato nel judizio contumaciale"* in *Il Progresso del Diritto Criminale* (Sept.-Oct., 1914), in which he upholds the new Italian code of criminal procedure as far as it requires the appointment of an attorney for the absent defendant in criminal prosecutions. If the defendant in a criminal case, duly served, fails to appear it is the duty of the court to appoint a lawyer to defend the absentee. But this does not open the door to a defense on the merits and the admission of evidence for the defendant. For, while the absence of the defendant not only shows an attitude of disobedience to court, justifying a refusal of all consideration towards him, it is equivalent to a plea of "Guilty." And, while the interest of society in the proper conduct of punishment requires that every accused should be defended in his absence, it does not obligate or authorize the state, as his agent, to advance pleas for him. Prof. Masucci believes this to be practically right, but his theories of the underlying principles are different. He does not believe that proof of innocence should be admissible, because this would put a premium on absence, and the absence might well allow the proofs to acquire greater weight than they would have in the presence of the accused. Testimony as to physical ability, while not intentionally false, might lose all weight when the defendant stood in court. But he does believe that documentary evidence of innocence should be admissible because it could not be affected by the accused's presence.

This changes the basis of the rule. It does not seem to be so logical as to prohibit judgment by default, on the ground that criminal justice is a public function and that the interest of society is against the entry of criminal judgments by default. Neither does the distinction between parole and written evidence seem legitimate. Either a judgment upon the commonwealth's evidence should be allowed, or else the counsel for the defense should be allowed to offer evidence. If the present Italian system is followed the judge should cross-examine the

witness as for the prosecution and "non-pros" where no case has been made out. This is the system generally followed in the United States. The accused has certainly authorized no one to enter a plea of "Guilty" on his behalf, and the interest of society certainly precludes the entry of criminal judgments when the commonwealth has failed to prove its case. J. L.

PENOLOGY.

Report of the Prison Inspector in Alabama.—The report of the prison inspector, Dr. W. H. Oates, of Alabama for the year ending September 30, 1914, has been received. We find in it a description of new jails in the State of Alabama that should encourage the most ardent friends of reform in prison construction. The description follows:

"In building new jails in Alabama the following ideas are being carried out:

"A sufficient number of apartments for the proper separation of whites and negroes, males and females, together with suitable places for sick and insane persons.

"The buildings to be as nearly fireproof as possible; with apparatus for extinguishing fire in readiness at all times and to be frequently tested and inspected.

"Safety vestibule for entering each cell apartment.

"All cells to be so arranged that they can be simultaneously unlocked in case of fire or other emergency.

"The cells to be placed against the wall (all walls being lined with steel), with a window in each cell, the windows being protected by tool-proof steel bars.

"The floors to be of concrete on metal beams, laid on an incline to drain pipes.

"In each central corridor is installed a concrete bench; and in each apartment adequate bathing facilities (shower baths for the men and tubs for the women), likewise a sanitary drinking fountain in each apartment.

"The dirty, vermin infested, insanitary mattress has been discarded and replaced by the swinging canvas hammock, similar to the kind used in the United States Navy.

"Prisons must necessarily be secure, but they may also be clean, healthful and comfortable. They should in all cases be so constructed that sunlight and fresh air can be freely admitted. Sunlight is a universal germicide and fresh air is its invaluable ally.

"Each jail should also contain a space in which daily and compulsory exercise in the open air may be had. An abundant supply of fresh, uncontaminated drinking and bathing water is an essential, and frequent baths should be required.

"The jails are painted white on the interior to promote cleanliness and to show dirt.

"By way of explanation: In referring to cells as interior cells we mean cells that are located in the center of a room with a passageway between them and the wall. This type of cell is invariably seven feet high and practically seven feet square, and in the greater number of cases they have solid steel tops and sides except for a small amount of grating, or lattice, so to speak, nearest the windows. In a few cases one entire side is grating or lattice, the balance being solid.

"Exterior cells are those next to and forming a part of the wall of the building. These are found only in the modern type jails. The ceilings range

from nine to twelve feet in height and the only solid steel is that forming the division walls. There is a window in each cell, which is protected with an extra heavy tool-proof guard connected to the steel lining. All walls to which the prisoners have access are lined with steel, thus affording them no opportunity for digging out.

"Superimposed cells are those built in tiers—i. e., one on top of the other—in some cases being as many as four tiers high.

"This construction of cell work is not being installed by this department in any of the new jails. Separate floors are required for each block of cells.

"Safety vestibule: This is a small enclosure of grating with double doors through which the prisoner enters a cell apartment. He is put into it, and the outer door locked; then the next, or inner, door is unlocked by means of a lever from the outside, and the prisoner is admitted to the apartment. This is a precautionary measure for the safety of the sheriff or jailer." R. H. G.

Stripes to be Abolished in Louisiana.— Stripes, the soul-depressing stigma of the penitentiary, must go.

So thoroughly has the Probe Commission, during its investigation of the state penal system, impressed this upon the Board of Control, that the board members have announced unofficially that when the supply of shame-branding fabric now on hand is exhausted no more will be ordered. Instead, a less conspicuous garb, probably khaki, will be adopted.

The change from black and white khaki will be gradual. The most exemplary convicts will be extended the privilege of wearing the new uniform first and the stripes will be left as a legacy to the undeserving. The Board of Control believes that such a scheme will furnish prisoners with an incentive to raise themselves and will reflect itself upon the whole penitentiary system.

It is proposed to divide the convicts into classes, according to their conduct. Class B convicts will be stripe wearers; Class A men will be given khaki. This will be continued, it is expected, as long as the coarse-woven striped cloth lasts. The Board of Control has several thousand dollars worth of it stored within the walls at Baton Rouge, but when it has all been used up, khaki will fill the huge storerooms instead and stripes will no longer be seen in the court yard of the walls or in the fields of the penal farms.

The members of the Board of Control today were asked by the Probe Commission to submit formal reports containing recommendations of reforms in which the penal system, they thought, should be instituted. The gradual abolition of stripes all are in favor of. Other recommendations which they will advocate and which most probably will be endorsed by the Probe Commission are:

Abolition, or curtailment of corporal punishment.

Purchase of a tract of timber land in North Louisiana which may be cleared by convicts and lumber manufactured from the timber, the tract later to be utilized for a penal farm.

Substitution of concrete buildings for the dilapidated structure of Oakley and Monticello plantations.

Purchase of a barge or houseboat for the quartering of levee gangs on the Atchafalaya.

The board believes that sickness among the convicts engaged in levee work

can be reduced by quartering them on such craft, which would also allow the board to take contracts in places where it is now impossible for the gangs to go because marshy ground will not permit the establishment of a camp.—*The Times-Picayune,* April 4, 1915.

Labor Men to Aid Osborne.—A delegation of labor men called on Gov. Whitman on Feb. 1 to tell him that they proposed to help Thomas Mott Osborne, the new Warden of Sing Sing, put the industries in that prison on an efficient footing. They asked the Governor's support for their proposed co-operation and the Governor assured them of his appreciation of their offer.

In the delegation were Collis Lovely, vice president of the boot and shoe workers; Thomas J. Manning, representing the garment workers, and Hugh Franey, the New York representative of the American Federation of Labor. Accompanying the labor men were Warden Osborne, Frederick Goetze, dean of the science department at Columbia, and E. Stagg Whitin, member of the National Committee on Prisons and Prison Labor.

There was a preliminary conference at Sing Sing a week earlier. The labor representatives propose to send union men up to the shops to make the industries efficient, and to establish an apprentice system which will train the prisoners for work at trades when they get out. The unions have all along opposed the old contract system, and are anxious to do all in their power to make effective the state-use system now in vogue.—From *New York Evening Post,* Feb. 2, 1915.

Capital Punishment.—It may be a matter of reasonable doubt to say that the death penalty does not stay the slayer because in states where capital punishment exists he has almost 98 chances out of 100 to escape. It would make a far more telling argument for the opposite opinion to say: "Give capital punishment a trial first before you attempt to abolish it." New York and Chicago together have a population about equal to London. In 1913 these two cities had a total of 417 murders; just twenty times as many as London, which, out of its twenty murderers, had hanged fifteen. May it not be possible that the slackness of the law, the misuse of its criminal proceedings, vastly more than the law itself must be blamed? Society owes to itself adequate protection. What guarantee has society against the murderer who, escaping the noose, goes to jail in the confidence that sooner or later he will be turned back on it? There are many awful features to capital punishment that are shocking and abhorrent, but we prefer these rather than a mawkish sentimentality that might leave us a prey to weak doctrinaires. Should capital punishment be abolished in this state, one safeguard should be given—the power of pardoning should be taken from the governor.—From the *New York World.*

Preliminary Report of the Commission on Prison Reform of the State of New York.—The Commission on Prison Reform of the State of New York was created on June 21, 1913, by appointment of the Governor of the State. He gave instructions to the members of the Commission to examine and investigate the management and affairs of the several State penitentiaries and reformatories, the departments thereof, the prison industries, the construction and plans for adequate prison facilities, the employment of convict labor, and all subjects relating to the proper maintenance and control of the prisons of the State of New York. The report is signed by: Professor George W.

Kirchiney, vice chairman; Thomas M. Osborne, chairman; E. Stagg Whitin, secretary; Edward A. Bates; Hannah Blum; Madeliene Z. Doty; Mary Garrett Hay; Howard R. Mosher; George W. Perkins, and John B. Riley. The summary of recommendations in the report follows:

I. "That Sing Sing Prison be abolished and a new prison to take its place be provided without delay, within a convenient distance from New York City.

II. "That the new prison be constructed by prison labor, mainly on the Cottage System, on an ample area of farm and forest land, and that sufficient land be acquired in the neighborhood of Auburn and of the other custodial and reformatory institutions of the State to furnish facilities for the largest possible variety of agricultural and other outdoor occupations for the prisoners.

III. "That provision be made by a system of medical examination for separating and segregating all adult mental defectives convicted of crime; and for establishing and maintaining a separate institution to be devoted to their care.

IV. "That a receiving station be established at Sing Sing for the observation and study of all persons sentenced to imprisonment in a State prison; for medical examination and the treatment of those afflicted with disease; and for weeding out those found to be mentally defective.

V. "That the penal law of the State be so amended as to make it incumbent on all judges sentencing prisoners to confinement in a State prison, to impose an indeterminate sentence without minimum or maximum limit.

VI. "That local advisory Boards of Pardon and Parole be instituted in connection with each prison and reformatory of the State, for the purpose of investigating all applications for pardon and parole and of reporting thereon to the proper authorities.

VII. "That the State Prison for Women at Auburn be abolished and the State Farm at Valatie be employed as the place of detention for all women convicts not deemed suitable for the reformatories at Albion and Bedford.

VIII. "That, pending the institution of the indeterminate sentence without limit, power be vested in the courts to commit to the reformatories at Albion and Bedford all female first offenders over 15 years of age who have been convicted of a felony involving imprisonment in a State prison—the present maximum age limit of 30 years to be removed.

IX. "That the so-called 'Honor System' be applied as rapidly as possible to all the penal institutions of the State, together with a considerable and increasing measure of self-government.

X. "That immediate steps be taken to secure an honest, efficient and businesslike administration of the system of prison labor in the State; and that able-bodied convicts be largely employed in constructing and repairing the highways of the State and of the several counties.

XI. "That prompt provision be made for establishing in the penal institutions of the State a thorough and comprehensive system of education under the administration of the State Commissioner of Education—such education to include instruction in the higher and technical branches of study, as well as in those of an elementary character.

XII. "That immediate attention be given to the task of improving the

libraries of the prisons and reformatories of the State; and that the administration of the libraries be placed under the direction of the New York State Library.

XIII. "That there be established in the office of the Superintendent of Prisons at Albany a bureau of criminal statistics for the purpose of collecting, tabulating and publishing the statistics relating to crime and punishment in the State.

XIV. "That immediate provision be made for the establishment in the office of the Superintendent of Prisons of an employment bureau for paroled and discharged convicts.

XV. "Finally, and as an essential basis of any permanent improvement of existing prison conditions, the Commission urgently recommends the consolidation and reorganization of the various offices, boards and commissions which now divide among them the administration of the prison affairs of the State, into a permanent State Department of Correction to which the entire penal administration of the State shall be committed." R. H. G.

Reforms in the Federal Penitentiary at Atlanta, Ga.—In the current issue of the prison publication "Good Words," from the Federal Penitentiary at Atlanta, Ga., we learn that in three years since the publication began many important changes have been effected in the prison world. The mark is clearing from the prison atmosphere. The old theory of vindictive vengeance is no longer popular.

The Reforms mentioned are as follows:
Abolition of stripes—substitution of plain, unmarked clothes.
Men addressed by name instead of by number.
Two half-holidays a week for games and pastime on the grounds.
Abolition of the silent system.
Freedom of conversing at meals and elsewhere.
Full orchestra with professional director.
Letter writing once a week.
Allowed to buy more tobacco monthly.
Allowed to buy and use safety razors.
Allowed to have lights on until 10 p. m.
Better food.
Motion pictures.
Sanitary barber shop.
Games with outside baseball teams.

R. H. G.

Municipal Civil Service Examination in New York for Superintendent of Women Prisoners—Date: April 6. 1915.

1. Discuss the need of a physical examination of women prisoners, upon their admission to a Workhouse, and outline the scope of such a physical examination.

2. Outline clearly the special regulations which you would deem necessary for the care, in a Workhouse, of prisoners who are addicted to the use of drugs. Give your reason for each regulation.

3. What steps would you take to make certain that the prison and the cells are always in a clean and sanitary condition?

4. (a) What prison occupations would you provide for short term women prisoners, sent to a Workhouse for misdemeanors? (b) Indicate clearly the classes of prisoners which you would assign to each of these occupations.

5. What activities would you introduce in a Workhouse for short term women prisoners with a view to training them to become law-abiding, and self-supporting upon their release.

6. Prepare a set of regulations governing the receipt and dispatch of mail by prisoners in a Workhouse for short term misdemeanants.

7. What action should a matron take in each of the following cases? Give your reasons for your answer.

(a) While in charge of a gang of twelve prisoners, outside of the prison, two prisoners start to run away in opposite directions.

(b) A prisoner assaults another prisoner in the mess hall.

(c) A matron finds one bichloride of mercury tablet on the floor of a cell in the morning.

8. (A) Describe clearly, using diagrams if necessary, the manner in which you would check profuse bleeding—(a) on the scalp; (b) at the calf of the leg; (c) at the wrist; (d) at the neck. (B) What assistance would you give a prisoner who has been rendered unconscious by receiving a severe electric shock? Describe your action in detail.

9. Discuss the dietary of a prison for short-term female misdemeanants, under the following subjects, giving full particulars, under each heading: (a) Elements of the menu; (b) supervision over food supplies; (c) supervision over cooking; (d) serving of meals.

10. Outline the manner in which prisoners convicted of offenses connected with, or arising out of a sporting life should be cared for in a Workhouse, covering the following points: (a) Admission; (b) hospital care; (c) discipline; (d) prison occupations; (e) release.

Write a report of not less than three, nor more than five pages to the Commissioner of Correction enumerating the objects which a judge seeks to accomplish by sending a woman to a workhouse for misdemeanors. Arrange the objects in the order of their relative importance in your opinion, and state clearly how you would, in the administration of a workhouse, endeavor to accomplish each of these objects.

Leonhard Felix Fuld, New York City,
Civil Service Commission.

Punishment for False Oath in Arabia.—Prof. Marcello Finzi has published in pamphlet form *I pergiuro falsa testimonianza e calumnia presso i arabi,* formerly contained in the December (1913) issue of *La Scuola Positiva,* the organ of the Roman school of *Applicazione giuri dico-criminale* of which Enrico Ferri is director.

A false oath is punished by the Arabians by religious penance: the manumission of a slave; supplying necessaries to twelve paupers; or fasting for three days. It is not punishable unless the guilty had full knowledge of the facts, was in full control of his mental faculties, not affected by sickness or drunkenness, and did not act through passion, for "Allah will not punish for an unconsidered word" (K. Scua II, v. 225). The place where the falsity is said affects the gravity of the crime. It is more serious in Mecca or in a mosque. The mute can be found guilty of this crime.

The note on this offense is interesting apart from the information conveyed for three facts. (a) The existence of a crime unknown to Occidental law; (b) the allusion to the existence of mutes, who were once more common in the West; (c) the similarity to European law of the Dark Ages, between the VI and XI centuries, when the nature of the "locus in quo" affected the penalty.

Perjury, although witnesses are not sworn, failure to tell the truth, or the telling of it in an obscure or vague way brings down upon the guilty witness the penalty entailed by the crime in regard to which his testimony was sought.

Accusation of crime and inability to prove it entails the whipping post. Both men and women are punished in public in this way.

It is strange how different races in different countries and under different skies have adopted different means for the attainment of the same general end, but have put different relative weight on different minor points.

J. L.

POLICE.

Examination for Captain of Police.—The following set of questions was set by the New York City Civil Service Commission on December 10, 1914. in an examination of candidates for the office of Captain of Police.

First paper; Administration, Weight 3.

1. Assuming that you have been appointed Captain of a precinct, state what steps you would take to insure the efficiency of patrol. State in detail what in your judgment constitutes efficient patrol.

2. The City Chamberlain recently said:

"The Police Department should be the eyes, ears and feeling fingers of the city government. It should hurl back to each department of the government responsibility for those conditions which that department is established to remedy or control.

"If it finds that laws cannot be enfocred and are thus the shield of wrong doing, it should have the courage to state that fact and give the evidence on which its belief is based in order that laws may be revised in adjustment to contemporary social conditions."

Discuss this proposal of social service by the Police Department taking up,

(a) Other city departments with which the Police Department might co-operate as indicated. Illustrate.

(b) Advantages to be secured by such co-operation.

(c) Administrative difficulties in the way of such co-operation.

3. As Captain describe, in detail, the plan you would follow in order to effectively safeguard the morals of children within your precinct.

4. Storekeepers in a certain precinct have complained to the Police Commissioner that organized bands levy blackmail upon them by threatening to inflict injury if their demands are refused. It is charged also that the same persons have committed several highway robberies but the victims are afraid to complain to the police. State in detail what action should be taken by the Police Department, assuming that the complaints are well founded, giving an account of the police action to be taken by members of the department concerned. Give your ideas also as to methods for repression and prevention of this class of crimes.

5. State in detail your opinion on how each of the following complaints should be investigated by the Police Department:

(a) It is charged that a certain firm purporting to be engaged in the sale of a patent medicine, is actually engaged in the illegal sale of drugs.

(b) Complaint is made that a certain poolroom is the resort of young pickpockets.

(c) It is charged that a certain house designated as a sanitarium is actually used for the purpose of performing criminal operations, many of the women patients coming from other states.

(d) It is charged that a certain printing establishment is engaged in printing counterfeit railroad tickets.

6. (a) What are the advantages of the system of permitting police subordinates to communicate directly with the head of the department? What are the disadvantages? If you think any of the latter should be overcome, state how. Give such reasons or examples as you may think necessary.

(b) Frequent complaints are made to you as Captain of a precinct that, under the guise of a social club, certain young men residing in the precinct are from time to time conducting games of chance at some point suspected in each complaint but not definitely described or stated. State how you would proceed to secure evidence sufficient for arrest and conviction.

(c) Outline clearly what action you would take as Captain of police if the lieutenants complained that they cannot give proper attention to all requests for police assistance received at the desk because there is only one house-duty man in the precinct.

Second paper; Rules and Regulations, Weight 2.

1. Give the detailed information which should appear in the Arrest and Aided Record:

(a) Concerning or attending an aided case.

(b) When a prisoner is bailed while in police custody.

(c) If a prisoner is charged with more than one offence.

(d) If an arrest is made by a member of the Detective Bureau.

2. Give the provisions of the rules and regulations of the department governing each of the following:

(a) Service of station house attendants on Sunday.

(b) Powers of inspectors to excuse captains and chief inspector to excuse inspectors from duty.

(c) Definition of patrol post.

(d. Duties of surgeon in the case of an intoxicated police officer.

(e) Powers of inspector to fill vacancies caused by absence of patrolman or matron.

3. Name ten minor derelictions of duty by members of the uniformed force which inspectors are authorized to dispose of, and state exactly how you would dispose of each kind of dereliction of duty mentioned by you.

4. Paragraph 450 of the Rules and Regulations directs, in part, as follows: "A Commanding Officer is responsible for the orderly arrangement and the sanitary condition of Department buildings, furnishings * * * * assigned to or issued for the use of his command."

Describe definitely and in detail how you would carry out the provisions of this paragraph as commanding officer of a precinct.

5. (a) Explain clearly and in detail, the supervision which commanding officers should exercise over memorandum books of patrolmen.

(b) You are directed by the Police Commissioner to make a report as to the necessity or advisability of granting an all night license for the sale of liquor for a certain liquor store in your precinct. Explain in detail the investigation you would make and the records, if any, you would consult, preliminary to making the report.

(It is not required to write a sample report.)

6. Draw up a set of instructions based on the General Orders of the Department for the guidance of patrolmen detailed to polling places on registration and election days.

Third paper; Laws and Ordinances, Weight 3.

1. Point out the essential facts which it is necessary to establish in order to secure a conviction for each of the following crimes:

(a) Receiving stolen goods.
(b) Keeping a disorderly house.
(c) Robbery, 1st degree.
(d) Extortion.

2. State the present and the past law governing the determination of an elector's residence. State the proper method of verification of voting lists and the points to be covered in asking questions while engaged upon such work. How would you cover such work in lodging-houses?

3. Prepare a set of instructions for the guidance of the men of your command in enforcing the provisions of the laws, ordinances and regulations governing automobiles. Cover the following in your instructions:

(a) Speed.
(b) Meeting street cars.
(c) Passing public schools.
(d) In congested streets.
(e) Violations to be corrected without arrest.
(f) Violations for which arrests should be made.

4. (a) A druggist is arrested for having unlawfully sold laudanum. His defense is that he put up in a bottle half a pint of laudanum and a half a pint of grain alcohol and sold the mixture as a liniment for external use only and so labeled the bottle. Is he guilty of any crime? Would your answer be different if the alcohol had been wood alcohol? Give reasons.

(b) In the case of a hotel operating under a liquor tax certificate, name five violations of the law with respect to the conduct of the hotel itself, a conviction upon any of which will result in the forfeiture of its liquor tax certificate.

5. State what action you would take in each of the following cases as precinct commander, giving your reason for your answer:

(a) After a woman has been assaulted in her apartment by her husband she comes downstairs and says to you on the street: "I have arrested a man upstairs who has assaulted me and want you to help me take him to the station house."

(b) Jane Doe asks you to arrest Richard Roe who was formerly her fiance because he has forcibly taken from her a diamond ring which he gave her as a gift a few months ago.

(c) A man asks you to arrest the driver of a taxicab summoned by him

by telephone because he insists upon charging seventy cents for taking one passenger and a light trunk from Third Avenue and Tenth Street to Third Avenue and Fourteenth Street.

(d) At about 9:30 P. M., a woman with her child, calls at the station house and states that some months previously she had secured a warrant for the arrest of her husband for non-support but that it was never served as he could not be found. She shows a telegram informing her that her husband is returning to the city from a neighboring state and that he is about to take a late train for Canada. Under the circumstances mentioned in this case, state what action you would take, together with the reasons for such action.

6. In a certain precinct there are many complaints of gambling houses and handbooks on the races. State clearly and definitely how the evils should be suppressed by the Police Department assuming that the complaints are true. In your answer explain clearly what evidence is necessary to secure in order to obtain convictions in the above cases and how it should be secured.

Fourth paper; Report, Weight 2.

A Captain of Police should be thoroughly acquainted with his precinct. This acquaintance should include a general knowledge of the inhabitants and the various buildings and familiarity with the special problems of that particular locality.

Write a report to the Municipal Civil Service Commission based on the above statements. In this report you will include the following points:

(a) As Captain, explain exactly and in detail the methods you would adopt in training your subordinates to make proper observations and reports of conditions in the precinct with a view to detecting, repressing and preventing crime.

(b) Give the reasons why such specialized knowledge of precincts is essential to the efficient performance of the duties of the Police Department as at present organized.

N. B. 1. In writing this report, the chief consideration will be given to the knowledge of the subject shown by the candidate and the value of the ideas expressed. Consideration will be given also to clearness and conciseness of expression.

N. B. 2. Sign this report—"Respectfully submitted, John Doe, Captain First Precinct." If you sign any other name, title or initials, it will be considered as a mark of identification and your paper will not be rated. There will be no deviation from this rule.

LEONHARD FELIX FIELD, New York City.

A Warning to Judges and the Police.—"The plea of alibi is readily put forth by accused in criminal cases as the easiest to think of and often under the impression that absence from the scene of offense altogether will be a complete answer to the accusation, as no doubt it will be when the exact time and place of absence is well established. But with the illiterate and ignorant whose conceptions of time and distance are rarely accurate no defense is more easily broken or more readily discredited by judges. It does not follow, however, that every plea of alibi put forth should be lightly walked over by responsible officers almost as so many confessions of guilt as they might indeed appear at times. Here is a solemn warning to be enshrined in the hearts of all whom it may concern:

"The *Amrit Bazar Patrika* publishes a sensational account of how an inno-

cent person was convicted of murder and sentenced to be hanged, but who fortunately was saved from the gallows by a merest accident. The story reads like a novel. In a murder case, the accused, Krista Mhatu by name, pleaded 'alibi,' saying that he was at a village eight miles distant from the scene of murder when the alleged murder was committed. The police did not stop to make inquiries, and the sessions judge, while finding that they ought to have verified the statement, disbelieved the plea of alibi and convicted Krista Mahatu along with two others, of murder. The High Court confirmed the sentence on appeal and the local and Indian governments refused to exercise their right of mercy in behalf of the accused. Hangmen were brought from Ranchi to the jail where the convicted prisoners were imprisoned that they might be duly taken to the gallows on the fixed date. But during the interval Babu Prafulla Chandra Bisvas, pleader, happened to meet Babu Nanda Lal Banerjee—sub-inspector of police, and in the course of conversation came to know certain facts which made him think that there was something wrong in the conviction of Krista Mahatu. Some further proofs followed by similar accidents. The pleader wrote to the jailor, requesting him to stay the execution by the use of his extraordinary powers, which the jailor did, he too being by accident in possession of information of a similar import. Then followed inquiries by Mr. Middleton, Joint Magistrate, whose tentative report led the government to stay the execution. Mr. Hingel, the deputy commissioner, then took up the inquiries and paid a surprise visit to the village where Krista Mahatu said he was while the murder was committed. As the result of the inquiry, he was let off outright and the sentence of the other two was commuted to transportation for life."—From *International Police Service Magazine,* Dec., 1914, p. 533.

After-Care of Delinquents.—The period of convalescence is recognized by all workers for delinquents as of supreme importance in the history of their cases. Success or failure is determined perhaps in a majority of cases by developments in this critical period. Recognition of this principle is of course essential to any sort of parole work. Legal sanction is often given roughly to the principle, as, for illustration, in Illinois where no application for parole is granted to a prisoner until definite arrangements have been made for placing him in satisfactory employment. Prisoners' Aid Societies also recognize the principle. But on the whole the working out of methods of follow-up or after-care of youths and adults discharged from penal or reformatory institutions is still rather unorganized and sporadic.

If our penal system has come to rest upon the sanctions of reformation and social utility in its treatment of the delinquent, and this is the obvious meaning of the indeterminate sentence, the committing agencies and the institutions that carry out their instructions must assume the responsibility of doing a good and complete job. That responsibility does not end when the court pronounces sentence, nor when the prison doors open to release an inmate. Neither does mere supervision after release satisfy even the minimum requirements of adequate after-care. It is notorious that most recidivism is the result of plunging a boy or man after his release from incarceration back into the very environment which was largely the cause of his original trouble. If the institution has been at all successful—and we are assured that very few boys or men are released lacking in high new resolves for decent living—the individual

has progressed, but this old environment has remained practically unchanged. Hence the common tragedy of relapse, breaking of parole, rearrest and "repeating."

Obviously then penal treatment cannot hope to succeed along the line of rehabilitating character, unless the environment be treated into which it is proposed to place the delinquent after his term of institutional care. To be specific, suppose it is the problem of a boy committed by the juvenile court to a state reformatory. Either the committing court or the reformatory should begin at once to work on the environment from which the boy has come. This will mean, first of all, recognition that the unit of treatment is not the boy, but his family, his gang, or his neighborhood. That is to say, we must come to see that the individual is not the only social unit, and that he most certainly is not the unit in a criminal situation. The recognition of this fact should not be optional, but obligatory and statutory. And the technique necessary to working out the problem should be provided by law. As a preliminary experiment juvenile courts and other courts should be encouraged to send probation officers, or to borrow or develop a corps of friendly visitors to be sent into the homes and neighborhoods from which they have committed children. A cooperative arrangement might be made between the court and the reformatory for following a common plan in each case and for an exchange of helpful information bearing on the case. Eventually, if some such plan as the State Penal Commission advocated by Mr. Randall be put into operation, the major part of this work of "replacing" would fall to it. The precise machinery involved is not the chief concern. The machinery will be developed when we once grasp firmly the idea that court and institution must not play at cross purposes, and that neither man nor boy can be judged nor redeemed to decency apart from his environment. A. J. T.

MISCELLANEOUS.

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