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# Notes on Current and Recent Events

## NOTES ON CURRENT AND RECENT EVENTS.

INCREASE OF CRIME IN ENGLAND IN 1908.[1]—In the introduction to the Criminal Statistics of England for 1908, Mr. J. W. Farrant, the official statistical expert says that in the year 1908 the number of persons tried for indictable offenses was 68,116, a higher number than in any previous year.

The increase in 1908 over 1907 was 11 per cent. But a comparison of crime with total population may be misleading, for there is little relation between the amount of crime and the number of children, women and aged persons who together make up three-fourths of the population. Most criminality comes from the male population within certain age limits. According to this expert, crime has increased in England very little in half a century. He sums up his remarks upon crime in 1908 as follows:

1. Crimes against the person showed an increase unimportant in amount.

2. Crimes against property, both trivial and serious, increased very largely the probable reason being distress and unemployment arising from depression of trade and labor disputes.

3. For the same reason vagrancy increased and drunkenness diminished, but otherwise non-indictable offenses showed no important changes.[2]

RUSSIAN PRISON ADMINISTRATION.—In view of certain criticisms directed against the management of the prisons of the Russian Empire, the imperial authorities have published a denial[3] of these stories which they charge with exaggeration and misrepresentation. The essential points of this denial are that Kennan, Kropotkine, Kautzky and others are carried away by political prejudices; that the evidence adduced will not bear analysis; that in reality the Russian prison system will bear comparison with that of other civilized countries. Along with the official affirmation there is a citation of facts. Thus, the number of prisoners in Russia to every ten thousand inhabitants before the political troubles (1906) was only six, while in France it was seven and eight-tenths, in Austria ten, in Switzerland twelve, in Prussia sixteen and three-tenths, in Belgium sixteen and seven-tenths. The political disturbances naturally increased the number of prisoners,, which rose from ninety-six thousand in 1905 to more than one hundred and seventy-one thousand in 1908. The cells available were not sufficient and crowding was inevitable. and with crowding, unwholesome conditions; but the government built larger prisons as rapidly as possible and the available places rose from one hundred and one thousand five hundred in 1905 to one hundred and twenty thousand, and are now sufficient. The number of sick in 1908 was seven and sixty-nine hundredths in one hundred prisoners, the mortality was 5,145, or forty-one per

[1]Judicial Statistics, England and Wales, for 1908, London, 1910.

[2]Furnished by Arthur MacDonald.

[3]"A propos des bruits sur les pretendues oppressions des détenus dans les prisons russes, démenti official." St. Pétersbourg. Imprimérie "Russo-Francaise." 1910. Pp. 29.

cent of all prisoners of the year or three per cent of the daily average. It is admitted that evils exist, but not that they are serious. It is officially denied that political prisoners are tortured or in any way treated harshly. The number of suicides varied between forty and forty-four each year previous to 1906; in 1907 there were one hundred and eighteen suicides and in 1908 there were one hundred and three attempts at self-destruction.

The Russian government invites foreigners to inspect its prisons and competent men pronounce a favorable opinion; one is cited, Dr. S. J. Barrows, formerly United States Commissioner on the International Prison Commission, who visited Russia in 1907, and who is reported as saying that the places of detention in Russia are by no means inferior to others and that, in certain respects, they are superior to those of England, Sweden, Norway and Denmark.

It is affirmed that the present administration is humane and is promoting improvements. Schools and libraries are furnished; prisoners are permitted to receive visits from clergymen of their choice; outdoor work is common; prisoners are given a share of their earnings; conditional liberation (the same purpose and principle as in our parole system) was introduced in 1909; societies for aiding discharged prisoners are encouraged by the government; houses of correction for young criminals are to be established; and finally, transportation to Siberia is to be abolished. C. R. H.

REMOVAL OF PICTURES FROM THE ROGUES' GALLERY OF BOSTON.—it is announced that the police authorities of Boston, following the example of Mayor Gaynor of New York, have issued orders that hereafter prisoners must be convicted of the crimes charged against them before their photographs can be placed in the rogues' gallery. Those whose pictures are already in the rogues' gallery, but who have not been convicted, will also have their photographs removed.

NEW JOURNAL OF PHILANTHROPY AND CRIMINOLOGY.—The "Institution Quarterly" is the title of a new periodical founded and edited by Frederick Howard Wines of Springfield, Ill. In a certain sense it will be an organ of the New Illinois Board of Administration, which was recently created to take over the management of the charitable and reformatory institutions of the state and of which Mr. Wines is statistician. It will be the purpose of the Quarterly to keep the people of this and other states fully informed of the working and results of the present system of central control of the institutions mentioned. The initial number, which appeared in May, contains a comparison of the former and present systems of institutional control in Illinois and a number of brief articles on various topics of interest to sociologists and criminologists.

J. W. G.

PUBLIC DEFENDERS IN CRIMINAL PROSECUTIONS.—Judge Ralph S. Latshaw of Kansas City recently declared it to be the duty of the state to employ public defenders the same as it employs public prosecutors. It should not be the aim of the prosecuting attorney, he says, to convict a man. Courts of law should be as much concerned in establishing the innocence of an accused person as in establishing his guilt.

"If I had my say about it," Judge Latshaw said, "I would divide the prosecuting attorney's office into two divisions, one to collect the evidence of a man's

guilt, the other the evidence of his innocence. The time will come when no man can come into a Criminal Court and employ counsel—but that time is far off.

"What I am arguing for now is the right of every man to have his case put before the court in a fair manner. Lawyers largely determine the decision of this court, as they do of every court. That is not just, for the rich man can employ attorneys; the poor cannot. So long as the present antiquated method of presenting cases in court remains, justice will be a thing bought and sold.

"I believe in civil cases the state should employ a public counselor. Lawyers now gobble up the larger part of the judgments in those cases. It is the business of private lawyers to thwart justice, prejudice courts and misrepresent facts."

J. W. G.

DRUNKENNESS IN MASSACHUSETTS.—The results of a very careful investigation by the trustees of the Foxborough Massachusetts State Hospital concerning the problem of drunkenness in Massachusetts have recently been published as House Document No. 1390 (70 pages, 1910). The investigation was made under the authority, and at the request, of the Massachusetts Legislature. The trustees, who are well qualified to deal with the subject, were assisted in the inquiry and in the preparation of the report by Dr. James Ford of Harvard University.

The report shows that 60 per cent of all arrests and 65 per cent of all imprisonments in Massachusetts during 1908 were on the charge of drunkenness. The Massachusetts laws enable persons arrested for drunkenness to sign a request for their release without arraignment, and if upon investigation by a probation officer the persons making such a request are found not to have been arrested before within the preceding twelve months on the charge of drunkenness, they are forthwith released by the police without appearing in court. Over 67,000 persons were so released during 1908. This practice is commended in the report, but it is pointed out that in order to make its operations entirely satisfactory there should be a central bureau of records.

The present laws of Massachusetts recognize drunkenness as both a crime and a disease. Chapter 504 of the Acts of 1909 (which, with all other Massachusetts laws relating to drunkenness, is printed in the appendix to the report) provides for the commitment of habitual drunkards to the Foxborough State Hospital by a procedure similar to that used in committing insane persons to state asylums. The report points out that in many cases persons arrested for drunkenness should not be treated as misdemeanants needing correction, but as men who are mentally ill and in need of curative treatment. Means are needed whereby the special needs of individual defendants can be better recognized before the court disposes of their cases. Many of the cases sent to hospitals are unsuited for such an institution, and on the other hand large numbers of those committed to correctional institutions are harmed by imprisonment, but might if sent to a hospital be greatly benefited.

The only modification of existing statutes recommended to be made at once is that imprisonment for the non-payment of fines in cases of drunkenness be abolished, and that defendants be released under suspended sentence or probation with permission to earn the money with which to pay their fines in instalments. The report presents a well-coördinated program for dealing with the problem of drunkenness and recommends various improvements and extensions based on the existing laws and practices. Emphasis is placed on the great

importance of discriminating between accidental, occasional and habitual drunkards. The principal recommendations as to methods of dealing with drunkards may be summarized as follows: release the accidental drunkard with an admonition; place the occasional drunkard on probation; in case of a subsequent arrest of an occasional drunkard, consider the advisability of imposing a fine, to be paid if necessary in instalments; when release, probation and fine prove inadequate, try institutional treatment, sending the curable cases to a hospital, the worthy but chronic cases to a detention colony, and the vicious or criminal cases to the state farm.

The report reviews the statutes and conditions relative to drunkenness and inebriety in foreign countries and in other states, and contains a brief bibliography. A. W. T.

NATIONAL COMMITTEE ON PRISON LABOR.—The National Committee on Prison Labor, recently incorporated under the laws of New York State, is organized to study and promote interest in the problem of prison labor; to develop satisfactory methods of carrying on industries in prisons and of finding markets for the products without antagonizing the interests of free labor or of employers; and to secure needed legislation on this subject. While the problem of prison labor is very old, this organization represents the first substantial endeavor to bring together prison officials, labor union leaders, employers, and other interested parties, for the purpose of dealing with the problem broadly and systematically.

The committee has resulted more or less directly from inquiries prompted by the National Federation of Women's Clubs, and carried on since last summer by the New York State Labor Department concerning the sale of convict-made goods. New York State prohibits the sale within the state of the products of its own prisons, but there is no law preventing the sale within the state of goods made in the prisons of other states. The output of the prisons in a large number of states is controlled by a pool of contractors. One firm, for instance, holds contracts with twelve prisons in eight states. The committee hopes, among other things, to secure the passage of laws which will properly regulate inter-state commerce in prison-made goods. Representatives of the committee have supported the Gardner bill (United States House of Representatives No. 1200) which provides that each state may pass laws, either forbidding or regulating the sale within its borders of goods made in prisons in other states. A. W. T.

NEW RESTRICTIONS ON THE PRACTICE OF LAW IN NEW YORK.—The Legislature of New York at its recent session enacted a law providing that none but attorneys shall practice law in cities of the first and second classes in that state.

Provision is made that a person shall not ask or receive directly or indirectly compensation for appearing as attorney in a court or before any magistrate in any city of the first or second class, or make it a business to practice as attorney in a court or before a magistrate in such a city, unless he has been regularly admitted to practice, as an attorney or counselor, in the courts of record of the state.

It is provided, however, that nothing in this proposed act shall be held to apply to officers of societies for the prevention of cruelty, duly appointed, when exercising the special powers conferred upon such corporation under article six of the membership corporation law.

The new law is to take effect September 1. J. W. G.

## CONFERENCE OF CHARITIES AND CORRECTIONS.

NATIONAL CONFERENCE OF CHARITIES AND CORRECTION.—SECTION ON LAW BREAKERS.—As the years go by, the National Conference of Charities and Correction deals less with methodology and more with the analysis of causes leading to poverty and crime. In a similar way, as time has gone on, and particularly because of the annual meetings of the American Prison Association, the treatment of the criminal has come to occupy a subordinate place on the program of the National Conference of Charities and Correction.

The basic theme of the recent Conference was the inter-relation of all forces leading to poverty and to crime and the necessity of the correlation and coöperation of those forces which seek the prevention of these evils. It is significant that recently the section devoted especially to the problem of crime and the treatment of the criminal has been re-named the "Section on Law Breakers." Before this section at the recent meeting several very important papers were read. Very significant was the paper of Dr. Alice Hamilton of Hull House, Chicago, who has conducted investigations as to the number of girls afflicted with hereditary syphilis and gonorrhea. Her results show most emphatically the need of physical examinations in all institutions for women and girls in order that the spread of these diseases may be checked or prevented. In this connection the question of the most desirable methods of reformation for women was discussed. It was felt that the only possible hope of a woman's reformation lies in supplying a training which will enable her to earn an honest livelihood. The home must be carefully chosen and there must be a parole supervision for a considerable period.

Judge Harry Olson, Chief Justice of the Municipal Court of Chicago, read a paper on "Adult Probation," in which he advocated more definite laws defining the powers of judges in applying probation to adults. Judge Olson maintained that probation should not apply to all offenses and that the law should state the crimes to which it should apply. He provoked an animated discussion through the statement of his belief that probation should not be applied in cases involving property where the amount involved should exceed $200.

Others following Judge Olson, among them Judge Wait of Minnesota, Judge Robinson of Iowa, Judge Gills of the United States Federal Court, maintained in general that the courts are competent to name any conditions which require no illegal action on the part of the probationer. It was very definitely urged that probation should not be measured by the crime, but by the individual.

In this connection, Miss Maud E. Miner, secretary of the New York City Probation Association and for a considerable period probation officer at the Night Court in New York City, pointed out the great difficulties attendant upon probation work with women of the street, and showed the comparative uselessness of probation in the cases of such women, unless they could be removed from their old environment.

Professor Maurice Parmelee of the University of Kansas presented a carefully prepared paper on a scientific basis for the treatment of problems of criminology and penology. Mr. Parmelee emphasized the necessity of utilizing various sciences in the study of the criminal and showed that as a basis for a consistent treatment of the criminal we must have data which can only be supplied by scientific study widely pursued. Mr. Parmelee's paper was in a measure a protest against a haphazard treatment of the criminal and a plea for much

of the accuracy and devotion to scientific data for which the Continental criminologists are noted.

Mr. Bailey B. Burritt of the State Charities Aid Association of New York presented a paper (read by Homer Folks of the same association) on "The Public Treatment of Inebriety in New York City." Mr. Burritt's paper showed the futility of treating the drunkard as a petty criminal with repeated short sentences to the workhouse or jail. The direct outcome of Mr. Burritt's study has been the introduction and passage of a bill in the last session of the New York Legislature providing for a Board of Inebriety in New York City, which shall conduct probation work on a large scale and also administer a hospital and an agricultural colony for inebriates. This bill has since been approved by the Mayor of New York City and awaits the signature of the Governor, after which the Board of Estimate and Apportionment of New York City may at its discretion appropriate a fund for the establishment of such a Board of Inebriety.

At the general session on Thursday evening, Miss Katharine Bement Davis, chairman of the section on Law Breakers, departed from her written paper and gave a powerful extemporaneous talk on the necessity of reformatories as a part of a modern penal system. The audience being largely local and there being no reformatory in the state of Missouri the talk was most timely.

The paper of the evening on the "Duty of the Law Maker to the Law Breaker" was a noteworthy contribution by Albert H. Hall of Minnesota. Mr. Hall's program was exhaustive, keen in insight and in a large degree workable. He outlined in detail remedial and preventive legislation, and emphasized particularly the need of reformation in our criminal code and method of criminal procedure. O. F. L.

NATIONAL PROBATION OFFICERS' ASSOCIATION.[1]—Since June, 907, informal meetings of the probation officers in attendance at the annual meeting of the National Conference of Charities and Correction have been held. In Buffalo in 1909 an organization known as the National Probation Officers' Association was formed. It is expected that this organization will meet at the same time and place as the National Conference of Charities and Correction, about which body there is collecting a group of organizations of specialists.

At St. Louis, in June last, the National Probation Officers' Association held one joint meeting with the National Conference on the "Education of Backward, Truant and Delinquent Children;" one joint session with the children's section of the National Conference of Charities and Correction; and five separate sessions.

A considerable number of judges of juvenile courts were in attendance, including Judge DeLacy of Washington, Judge Baker of Boston, Judge Mack of Chicago, Judge Porterfield of Kansas City, Judge Nash of Buffalo, Judge Addams of Cleveland, Judge Jewell of Grand Rapids and Judge Shock of Topeka.

A large number of probation officers representing all sections of the country were present, as was also a number of private citizens interested in probation. The attendance at the separate meetings ranged from fifty to two hundred persons.

The program was unlike that of any other organization meeting in St. Louis in connection with the National Conference of Charities. There were no formal papers whatever. The president of the association, Mr. Homer Folks, who was to have read an opening paper, was unable to arrive until a later session. A pro-

[1]Furnished by Homer Folks, president of the association.

gram for each meeting had been carefully arranged indicating just what subjects would be considered and several persons had been selected in advance to open the discussion informally.

The subjects considered were as follows:

WEDNESDAY, MAY 18, 2:30 P. M.

Symposium on Juvenile Probation.

(A) Methods of Probationary Oversight of Children.

1. Establishing and maintaining proper relations with the child.
2. Establishing and maintaining proper relations with the child's home.
3. Securing the coöperation of school authorities, employers, and other persons and agencies.
4. Methods of keeping informed about the conduct and condition of probationers.
5. Medical examination and oversight.
6. Constructive moral and social influences.
7. Methods of dealing with unsatisfactory conduct and violations of the probationary conditions.
8. Restitution as a factor in reformation.

THURSDAY, MAY 19, 10 A. M.

Symposium on Juvenile Probation—Continued.

(B) Organization of a Staff of Probation Officers.

1. The functions of a chief probation officer.
2. How to determine the number of probation officers needed; salaried and volunteer.
3. Personal assignment versus the district system.
4. The relative number of men and women probation officers required.
5. Oversight of volunteer probation officers.
6. Should preliminary investigations be made by probation officers who also exercise supervision over children, or by special investigators?

THURSDAY, MAY 19, 2:30 P. M.

Symposium on Adult Probation.

(A) The Probationary Treatment of Men.

1. Persons most suitable for probationary treatment.
2. Methods of keeping informed about the conduct and condition of probationers.
3. Constructive moral and social influences.
   (a) In cases of men living at home;
   (b) In cases of men living away from home.
4. Period of probation.
5. The probationary treatment of men convicted of non-support.
6. The probationary treatment of drunkards.
7. Restitution as a factor in reformation.

(B) The Probationary Treatment of Women.

1. Preliminary investigations in cases of women defendants.
2. When is it advisable to apply probation to women guilty of sexual immorality?
3. Special precautions and efforts needed in supervising women probationers.

## ILLINOIS STATE'S ATTORNEYS ASSOCIATION.

MONDAY AFTERNOON, MAY 23, 2:30 P. M.

Symposium on The Judge's Relation to Probation Work.

(A) Practice and Procedure in Juvenile Courts.

Discussion opened by Hon. Harvey H. Baker, judge of the Juvenile Court, Boston, Mass.; Hon. George H. Williams, formerly judge of the Juvenile Court, St. Louis, Mo.; Hon. H. S. Hulbert, judge of the Juvenile Court, Detroit, Mich.; Hon. Timothy D. Hurley, editor of the Juvenile Court Record, Chicago, Ill.

(B) The Judge's Part in Probation as a Reformatory Agency.

1. How closely can the judge be expected to keep informed about the conduct from time to time of persons on probation?
2. To what extent can the judge determine the detailed methods of the work of probation officers?
3. Is it practicable for the judge to determine the conditions to be observed by each probationer?
4. How to deal with serious misconduct on the part of probationers.
5. What factors should enter into the determination of the period of probation.

THE ILLINOIS STATE'S ATTORNEYS ASSOCIATION.—The annual meeting of the Illinois State's Attorneys Association was held in Chicago June 1 and 2. Among the addresses of interest were those by Professor Chas. R. Henderson of the University of Chicago, Hon. James M. Sheean of the Chicago bar and Mr. Thomas R. Marshall of the Cook County State's Attorney's office. Professor Henderson criticized the Illinois parole system, saying, "It is a farce—a tragical farce—to send men out of our penal institutions without help, care or a guardian, and then expect them to do what is just and right." "I have no love for the present parole law," the professor continued, "and those who were instrumental in securing its passage did not get out of it what they expected. I am satisfied that the parole system cannot be what it ought to be until the person with the criminal tendency is kept under surveillance for three or four years, with help, care, encouragement and an environment in which he may strive and live. What we ask is a chance for these poor wretches of the slums. Justice does not mean the measuring out of pain. Instead of teaching men that the way of the transgressor is hard, we often make them more desperate."

Mr. Sheean strongly criticized the fee system as a method of compensation for state's attorney's and declared it to be a relic of barbarism. Among other things he said, "The remuneration of a state's attorney now depends upon the severity of the punishment that is meted out to his fellow man. He gets so much for a head and something less when a milder punishment is meted out. It is a base appeal to the basest instincts of the human race, a disgrace to Illinois and an affront to any state's attorney. It places every state's attorney on the same plane with men of the stone age. It makes you headsmen and ought to be wiped off the books without delay. According to this law, your remuneration will be commensurate with the number of scalps that dangle at your belt. It is barbaric, disgraceful and unjust and it remains for the state's attorneys to lead the way toward a reform."

A plea for more simple indictments was made by Mr. Marshall, who declared

that the language employed in framing indictments is the same as was used centuries ago. The present system, he declared, constitutes a serious handicap to the administration of justice and is a disgrace to the state. J. W. G.

INTERNATIONAL AMERICAN SCIENTIFIC CONGRESS, AT BUENOS AIRES.—One of the items of the program arranged to commemorate the Centenary of the Revolution of May, 1810, is an International American Scientific Congress under the auspices of the Argentine Scientific Society held at Buenos Aires from the 10th to the 25th of July, 1910. One of the eleven section into which the Congress was divided was devoted to the subject of Psychology and under this general rubric were established sub-sections on Comparative Psychology and Anthropometry; Psychology applied to Criminal Jurisprudence, Law, etc.; and Psychology Applied to Psychiatry and Morbid Psychology, among others. Among the subjects on the program for discussion at the meetings of these sections were: Psychological foundations of criminal responsibility; Evidence from the psychological point of view; Genesis and evolution of the judical element; Psychological foundations of incapacity in the family relations; Anthropometry, its use and application in schools; Psychology of the imbecile; Insanity in woman and in man and legal psychopathology of simultaneous insanity in two individuals, communicated by one to the other. Among the vice-presidents of the section on Criminal Law are Osvaldo M. Piñereo, LL.D., Professor of Penal Law at the University of Buenos Aires; Carlos Ibarguren, D.C.L., Professor of Roman Law in the Faculty of Law and Social Sciences; Rafael Sanchez Sorondo, D.C.L., Professor in the Faculty of Law, University of Buenos Aires. In the list of vice-presidents of the section on Psychiatry we note the following: José A. Esteves, M.D., Professor in the Faculty of Medicine and Director of the National Lunatic Asylum; Lucas Ayarragaray, M.D., Staff Doctor of the National Lunatic Asylum; Agustin J. Drago, M.D., Physician to the Appellate Tribunals and of the National Lunatic Asylum and Lucio V. Lopez, M.D., Physician to the Criminal Lunatic Department. The proceedings of the Congress will be published. E. L.

THE PRINCIPLE OF RESTITUTION IN THE ADMINISTRATION OF JUSTICE.—Some of the judges of New York State have adopted the practice of requiring offenders found guilty of assault, larceny and similar offenses to make compensation to the injured parties for the damages or losses sustained. Judge Marcus of Buffalo recently placed on probation a clerk convicted of stealing from his employer and ordered him while thus released to pay to his employer $250 in instalments in compensation for the property stolen. In another case a chauffeur whose automobile had accidentally killed a child was released on probation with the understanding that he should pay the child's father $1,000. Commenting on this proctice *Case and Comment* remarks that it is just to the victim and has a wholesome effect on the offender. Continuing, it says, "Good sense would seem to declare that a man who steals from another should be ordered to repay the stolen amount. The laws of our state do not specifically provide for the collection of restitution in criminal cases. The probation system, however, based, as it is, on the theory that a court in suspending sentence and placing a defendant on probation may order the person to obey such reasonable conditions as seem essential, offers a means whereby judges can direct defendants to make reparation for injuries they have inflicted.

"Restitution has been collected by probation officers also, in inferior courts, in less serious cases. Men guilty of disorderly conduct have been obliged while on probation to pay for damages to property, occasioned by their rowdyism. Children on probation have been made to pay an equivalent for losses resulting from their petty thefts or malicious mischief. The amounts involved have sometimes been trifling, as when a child has been made to pay 50 cents to replace a broken window; but the moral and disciplinary influence on the child, of requiring the settlement, has been important. The practice of requiring restitution is based on sound ethical principles, and the cases are numerous in which the measure is applicable." J. W. G.

PROPOSED ABOLITION OF UNANIMITY REQUIREMENT FOR VERDICTS IN CRIMINAL CASES.—Governor Noel of Mississippi, who is deeply interested in the subject of reform of criminal procedure, recently submitted to the legislature of his state a proposition to abolish the unanimity requirement and allow three-fourths of the jury to return a verdict. In laying before the legislature his proposal, he said: "A majority of votes, however small, determine the result of elections. Majorities speak for all in legislatures and in courts, even as to laws and sentences imposing the death penalties. Juries only pass on questions involving credibility of evidence, determining which, of conflicting sides or versions, they believe. Their verdicts are not matters of personal knowledge, but of belief based on a balancing of conflicting testimony. If there be no such conflict of testimony as might induce two honest and intelligent men, after hearing it, to reasonably reach opposing conclusions, then there is no question for the jury, and the court settles the whole case by peremptory instruction. Considering this function of the jury, its sole function, a unanimous verdict is an unreasonable and an anomalous requirement, and should be abolished. It serves to defeat justice very often by furnishing an easy method of stocking a jury with one man, put there to force a predetermined verdict, or a mistrial; and, in any event, results in too many mistrials; and is out of harmony with our system of governmenut, in all of its other branches, in which majority rule prevails."

The Governor might have added that every country in Europe where the jury system prevails, and also in Scotland, either a majority or two-thirds of the jury may return a verdict in criminal cases, and in England where the unanimity rule is retained, the judge plays such an important part in the trial that the worst evils of the jury system are avoided. He might also have added that in many cases in this country where a unanimous verdict is required the unanimity is apparent rather than real and that verdicts in consequence represent unsatisfactory compromises. Everyone is familiar with cases in which a single juror has set at naught the opinions of the other eleven—has by sheer obstinacy and physical endurance compelled his associates to agree to verdicts which did not represent their real convictions or driven them to disagreements, in either case defeating justice. The unanimity rule, in our opinion, gives too much power to one man. It virtually places the enforcement of the criminal law in the hands of a single individual and one, too, who is often selected with little regard to his qualifications for so important a trust. In many states the Constitution permits majority verdicts in cases involving misdemeanors and in a few (Louisiana and Montana, for example) two-thirds of the jury may return verdicts in all cases not amounting to felony.

Commenting on Governor Noel's proposal the Jackson *Clarion-Ledger*, the leading newspaper of Mississippi, remarks that, "The importance of such a law as this has been recognized for many years, and there is no doubt that justice has miscarried in thousands of cases, for the simple reason that one man has been bought to hang the jury on which he was serving. Law-abiding citizens everywhere will sanction and indorse the proposition that Mississippi shall abandon the old-time law that a full jury of twelve must vote to convict before criminals are given their just dues." J. W. G.

EVILS AND REMEDIES IN THE ADMINISTRATION OF THE CRIMINAL LAW.—Under the above title Mr. Samuel Untermeyer of the New York bar in an address at Philadelphia, April 9, pointed out some of the difficulties in the way of the administration of the criminal law and suggested how they might be removed. Mr. Untermeyer started out by saying that the American people have not that respect for law which is found among the people of foreign countries—a fact which is due largely, he says, to the character of the proof required to convict a wrongdoer, especially in cases involving crimes of a financial character, and to the difficulty of securing such proof because of constitutional provisions designed to shield an accused person from unjustifiable prosecution. Such are the provisions which relate to searches and seizures, the issue of warrants, being a witness against one's self, etc. A striking illustration of the difficulty of prosecuting a man under such provisions is afforded in the pending prosecutions for violations of the federal anti-trust law. The most flagrant of these violators are practically immune because they cannot be forced to disclose the "gentlemen's agreements" and other forms of unlawful combinations, as the result of which every human soul in the country is daily paying tribute to them. We shall never be able to rid ourselves of the blight of the trusts without the stern application of the criminal law and the constitutional provisions referred to above constitute the only barrier between the people and the execution of their will against these violators of the law.

The second great evil in the administration of the criminal law, in the opinion of Mr. Untermeyer, is the prevalence of perjury due to the non-enforcement of the laws enacted for its punishment. In no country is wilful false swearing so prevalent as here, where perjury is committed in at least three out of every five cases tried in the courts, in which an issue of fact is involved.

The third evil in the administration of the criminal law is the unbridled license of the press in commenting upon and often trying cases in the public prints. This is a prolific source of the miscarriage of justice and is most prejudicial to the rights of defendants charged with crime. It creates a sentiment in the community as to the guilt or innocence of the accused, which makes it well-nigh impossible to secure an impartial jury. The atmosphere and sentiment thus created are bound to affect not only the jury but the courts as well. "The abuses that have arisen under this head," continues Mr. Untermeyer, "have become well-nigh intolerable. Prosecuting officers, who are ambitious for further honors, maintain elaborate Press Bureaus for the distribution of news concerning their offices. The reporters who want to stand well with the prosecuting officers and get all the news that is to be had fall into the habit of taking the prosecutor's version. Of late years nothing is sacred. A witness is called before the Grand Jury, and the testimony given there in important cases manages "to

leak out" day by day. The secrecy of the Grand Jury Room is a thing of the past. The law against disclosing occurrences there is a dead letter. The prosecuting attorney is generally the chief offender and frequently the only one. The main concern of a modern prosecutor in one of the great cities of this country seems to have become to keep himself before the public, which he does by seeing to it that the public is informed of everything that happens in his office from his own point of view. I do not mean to assert that this shocking condition is universal, but it is not uncommon and is growing more frequent."

The following are suggested as remedies for this condition:

1. The enactment of laws, similar to those prevailing in England, prohibiting a newspaper from publishing anything concerning a case that is in the courts other than a *verbatim* report of the proceedings in open court.

2. Prohibiting any newspaper from commenting, either editorially or otherwise, upon the evidence in judicial proceedings until after final judgment.

3. Prohibiting any prosecuting officer, under penalty of removal and punishment for a misdemeanor, from expressing or suggesting for publication an opinion as to the guilt or innocence of a person accused, or from disclosing any of the proceedings of a Grand Jury, or from publishing or being privy to the publication of any evidence in his possession bearing on any case under his control. If an assistant or other person in his office is guilty of any of the acts charged it should be ground for the removal of the prosecutor and the punishment of the assistant, or any other person connected with the office, so offending. J. W. G.

REPORT OF THE NEW YORK STATE PROBATION COMMISSION.—The third annual report of the New York State Probation Commission states that over 11,000 offenders were under the care of probation officers in that state last year, over 9,000 being placed on probation during 1909. The report shows that an increasing number of courts are using the system, and that the standards of probation work are improving, and good results are being obtained.

The Commission recommends, among other things, that probation be used more generally in rural sections; that greater use be made of probation as a means of obliging offenders to make restitution for losses or damages caused by their offense; that children in juvenile courts be examined by physicians, so far as is practicable, to learn whether their delinquency is due to physical defects which can be remedied; and that more careful investigations be made of the character and history of defendants before being placed on probation.

The system was used during 1909 in the Supreme and county courts of 27 counties, and in the inferior courts of 24 towns and villages and 30 cities. Paid officers were employed for the first time last year in the Auburn Recorder's Court and the Rochester Police Court, and in the county courts of Erie, Essex, Montgomery, Oswego, Ostego, and Warren counties. Over 500 persons, most of whom were volunteers, acted as probation officers in the state during 1909. There are now 65 probation officers paid under that title from public funds.

Of the 2,795 children under probationary oversight during the year, 2,065 were put on probation in 1909. The most common offenses for which boys were convicted and placed on probation were larceny and truancy, and the principal charges against girls were being disorderly or ungovernable, or without proper guardianship. About three-fourths of the children passing from probation, according to estimates of probation officers, were benefited.

The Commission favors the physical examination by physicians of children in juvenile courts to ascertain whether bodily defects have contributed to their delinquency. The report declares that remedying defects, such as adenoids, defective eyesight and hearing, and mal-nutrition, frequently improves the conduct of children.

The Commission also favors, so far as is practicable, the hearing of children's cases in juvenile courts by civil procedure instead of by criminal procedure. Under a law which became effective this year children in the Buffalo Children's Court, instead of being convicted, are adjudged to be in need of the care and protection of the state. This practice spares them the stigma which attaches to a conviction.

During the past year, 1,371 persons—of whom about 1,000 were guilty of felonies—were placede under the care of probation officers in the Supreme and county courts of 27 counties. Many of these were young men never convicted before.

The social conditions, the non-enforcement of law and the absence of preventive agencies in many rural localities are asserted to call seriously for the use of the probation system. The report says:

"Much of the shiftlessness, lawlessness, truancy, vice and crime in rural places goes uncorrected. Before anything effective is done to check the wayward tendencies in children and the rowdyism in young men, the evils often become so grave as to be beyond remedy. Some of the worst criminals and the most degenerate families in the state have grown up in small communities. In the absence of probation, practically the only course available is commitment to jail, and this rarely does good, and in many cases does harm."

The Commission indorses the practice, now used in several courts, of requiring offenders to make restitution or reparation to the aggrieved parties, for losses or damages caused by their offense.

The use of probation has been extending rapidly throughout the country. Previous to 1901, the year in which New York state first passed laws providing for the system, only 7 states had probation laws, while now probation laws are found in 37 states and the District of Columbia. During 1909 seven states passed laws authorizing probation for the first time for adult offenders, and three states authorizing the system for the first time for child offenders. J. W. G.

THE ALIEN CRIMINAL.—In an article entitled the "Alien Peril," published in the Metropolitan Magazine for June, Mr. A. B. Lewiston sounds a note of alarm at the rapidity with which our prisons are being filled with foreign-born convicts. He quotes the census statistics to show that in 1908 there were 15,323 alien criminals in the prisons of this country, including the insular possessions, the proportion being about ten per cent of the total prison population. In New York state, he says, one prisoner in every four is an alien and the situation has been growing more and more serious for several years past. One-half of the increase in the prison population of New York during the past three years has come from the ranks of the alien class. While the customs officials see to it that no dutiable article is admitted to the United States, the immigration authorities are admitting hundreds of criminals to our shores. During the past year, indeed, only about one twenty-fifth of one per cent of all the immigrants who came were refused admission on grounds of criminality and during the year only 69 were

deported for criminal reasons. The immigration authorities have the power to deport every alien likely to become a public charge and they should utilize this authority by ordering at once the arrest and deportation of every alien now at large who is known to have a criminal record and who has been in this country less than three years. By this means a large proportion of those who are now a public charge in the prisons of the country could be gotten rid of and the cost of supporting them eliminated. Pardon boards and boards of parole might be given the power to designate such prisoners as should not be deported in order to avoid hardships in individual cases. The consular service should do more to check the tide of immigrant criminals. Immigration detectives coöperating with foreign governments might be made use of and government inspectors ought to be placed on every ship carrying immigrants, who by mingling with the steerage passengers could discover many of the undesirable class and thus prevent their admission to the country. J. W. G.

REFORM OF LEGAL PROCEDURE.—A joint committee from the American Bar Association and the National Civic Federation has been at work on a plan for reform in our methods of legal procedure. Following a recent meeting of the committee in New York City, Mr. Everett P. Wheeler of New York, chairman of the American Bar Association's committee on reform in legal procedure, and Mr. Ralph W. Breckenridge of Omaha, chairman of a similar committee appointed by the National Civic Federation, issued the following joint statement:

"The scheme for reform in legal procedure is one in which all classes of people are interested. The public generally is concerned in a more speedy, cheap and certain execution of the criminal laws. Individual litigants are greatly interested in a more economical and certain enforcement of the law as applied to all the relations of men and corporations with each other, in all kinds of civil suits; and the committee on reform in legal procedure of the National Civic Federation, in coöperation with a similar committee of the American Bar Association, has for its purpose the ultimate elimination of the evils and the cure of the abuses which now hinder the proper administration and execution of the law.

"These committees have not been appointed to bring about any reforms in the law itself; but their object is, if possible, to change the procedure and machinery by which the law is administered throughout the United States. The miscarriage of justice in criminal cases is generally due to the defective administration of the law and the technicalities which arise in criminal trials. Ninety per cent of the proverbial 'law's delays' are due to the system under which the law is administered, rather than to the intention of the attorneys interested in delayed suits or the benefit resulting to either side from delays. As a matter of fact, it is to everybody's interest to have lawsuits quickly and cheaply disposed of, with due regard to the rights of the parties. Our complex civilization and the great variety of business enterprises which make up our commercial life require that each particular business shall be conducted as simply and as economically as possible.

"The system under which the law is administered is, in most parts of this country, a hundred years behind the age. Take, for instance, the rules which govern the procedure and trials of equity causes in the federal courts. (By equity causes is, of course, meant cases which are tried by the judges without juries.) These rules are borrowed from the English chancery courts and most of them

have celebrated their centennial. It is the growing opinion among thoughtful lawyers that the slow and tedious process by which equity cases are tried in the federal courts is a scandal to our jurisprudence.

"Another abuse calls loudly for correction: It has been stated upon good authority that one-third of all the questions decided by courts of last resort in the United States are technical questions of practice and procedure, and of these a very large and altogether unnecessary percentage of decisions relate to the useless science of appellate procedure. (That is, many cases are decided, without reference to their merits or the rights of the parties, purely upon technical questions relating to the transfer of the causes from the lower to the higher courts.) It ought not to require any science to obtain a review in an Appellate Court of the decision of a lower court.

"The plan of the two committees on procedural reform is to prepare a simple practice act for the federal courts which can be used as the basis of a reformed practice act in the several states.

"Bills recommended by the American Bar Association are now pending before Congress which in substance provide that the decisions of questions of law arising on the trials of jury cases be reserved for final decision and judgment upon the merits without regard to technical errors.

"This movement has the hearty support of President Taft, who publicly and privately has urged a radical change in the administration of the law. Sub-committees of the committees of the Bar Association and the Civic Federation have been appointed to prepare a practice act along these lines and their progress will be reported to the next meeting of the American Bar Association, to be held in Chattanooga, August 30-31, and September 1, 1910. J. W. G.

SLOW JUSTICE.—Samuel Scoville, Jr., of the Philadelphia bar, whose article entitled "Safeguarding the Criminal" was summarized in the July number of the JOURNAL, takes another whack in the *Saturday Evening Post* of June 4 at our treadmill methods of administering justice. He illustrates his proposition that justice is so often delayed as to amount to a denial, by reference to a number of cases of which the following are typical: The first was a suit brought by a brakeman against a railroad company for damages. He had lost an arm through the alleged negligence of the company. As the arm was of value and the company refused to pay for the same, its former owner brought suit. Four times he recovered verdicts against the company after years of waiting. Four times did the Supreme Court reverse his judgments on various technicalities. Three times did that body send the case back for a new trial. On the fourth appeal the Appellate Court evidently felt that the railroad company had been bothered long enough over a mere missing arm, and not only reversed the judgment but also refused to allow him a new trial."

'Another western case of deferred justice is that of Vickers vs. Buck, reported in volumes 60, 65 and 75 of the Kansas Reports. From a common-sense standpoint the significance of this case lies in the fact that at the first appeal the defendant requested the Supreme Court to decide the case then and there on its merits, as the court had the power to do. The Appellate Court, however, decided to send the case back for a new trial. Because of this the case has been before the Supreme Court of Kansas several times since and is now pending be-

fore the Supreme Court of the United States, having reached the ripe age of thirteen years.

"Another almost interminable case brought about by our system of unlimited appeal was that of Ellis R. Williams, a brakeman. He was injured in July, 1882, by the negligence of the company and brought suit for damages in that year. The case was pending from 1882 to 1904, some twenty-two years. During that period no less than seven new trials were obtained. Williams finally obtained a recovery of sixty-five hundred dollars, but the record fails to show what portion of that was required to pay for these years of expensive litigation."

In Philadelphia, says Mr. Scoville, it usually takes two years to reach a jury case and it may require six. He quotes the following from a report of a committee of the Pittsburg County Bar Association in 1909 to show the condition of the court dockets in that county:

"As the number of jury cases awaiting trial is 7,274, and the four courts together have tried only 783 cases in 1908, it would seem at first sight that it is a hopeless task to try to recover a position where jury cases could be promptly disposed of—say, within six months after being put at issue. From careful investigation we find that the courts are behind with the jury trials as to time about as follows:

On January 1, 1909:

Common Pleas No. 1—Three and one-half years.

Common Pleas No. 2—Three years.

Common Pleas No. 3—Three years.

Common Pleas No. 4—Two and one-half years.

We find that a majority of the jury cases are either settled, non-suited or abandoned in one way or another without coming to trial, and it is fair to presume that the parties become wearied with the delay or, perhaps, die, or the witnesses die or disappear before the case can be brought to trial. The bald fact remains that there are now 7,274 cases at issue awaiting jury trials, with this amount increasing at the rate of twenty per cent per annum. At this rate there will be in 1912 about 10,000 cases awaiting trial by jury. This incubus, this heap or mountain of 7,274 cases, now lies piled up right in our path and must be continually pushed ahead of us. This accumulation, lying as it does in our front, keeps back for a period of three or four years all suits that may hereafter be brought, and the heap in our front is increasing every day."

Mr. Scoville concludes his article with the following observations:

"Judge Lynch usually executes each year more criminals than do the ordinary courts of justice. For example: in 1908 there were one hundred lynchings and ninety-two executions. As this article is being written the daily papers tell the story of a mob which burst into a courtroom in Texas, and threw an aged negro, whose case was being tried in this court, from the second-story window. The mob did him to death and then hung the body to an arch in the middle of the city. The incident is typical of the widespread feeling that has been wrought by delay and technicality.

"I can obtain justice in hell quicker than in Philadelphia," writes one man after four years' fruitless waiting for an opportunity to try his case.

"Not being immortal, we have decided to bring no more suits in Philadelphia," writes the head of another firm.

"Such denial of justice is misery and despotism. Court conditions in Russia

are not as bad as they are here. Please do something for me," wrote a former Russian emigrant waiting for his case to be reached.

"The responsibility for these conditions rests largely with the courts themselves. The judges have almost unlimited power in passing rules to regulate the practice and procedure of their courts. The late Judge Doe changed the whole system of law in New Hampshire between 1879 and 1885 without the enactment of a single statute. Delays and technicalities during his administration as chief justice were driven out of the New Hampshire courts, one by one. In the Municipal Court of Chicago general orders have been subsstituted to a large extent for legislation. England, where cases of the Jarndyce vs. Jarndyce type abounded, and where time and technicality seemed to constitute the very warp and woof of her system, now, mainly by the efforts of single progressive judges, stands as the leader of the world in swift and accurate justice." J. W. G.

STUDY OF THE EYE IN MENTAL DEFECTIVES.—Drs. L. Pierce Clark and Martin Cohen, of New York, presented before the Pediatric Section of the New York Academy of Medicine at its April meeting, a study of the eye in mental defectives. The paper appeared in the *Journal of the American Medical Association* for April 16. Little attention has been paid to the examination of the fundus of the eye in idiocy. Moss of Berlin examined 116 feeble-minded children in 1905 and found but two cases of alteration of the fundus. His cases, however, were not drawn from low-grade idiots. Gelfe examined 578 cases, comprising 192 mentally backward boys and 192 girls of the same class; 25 boys and 21 girls who were weak-minded; 47 boys and 30 girls who were unteachable imbeciles and 42 boys and 22 girls of low-grade idiots. Only 27.5 per cent showed normal eyes. Gelfe found a percentage of 43 for normal fundi, 56 for weak-minded and 83 for backward children. Drs. Clark and Cohen undertook the study of the eye in the mentally defective child in order to throw some light on the optic nerve changes in dementia praecox and found that three-fourths of all the cases of idiocy which they studied showed varying degrees of degenerative neuritis. The second object of their inquiry was to note the presence or absence of pathognomic structural defects of the eyes of feeble-minded and idiotic children as compared with other grosser mental physical defects. The findings on this question have been mainly negative. They found that eye defects of idiocy do not usually extend beyond those of mere functional incompetence of vision.

The studies were made in the Randall's Island service, giving over 1,000 cases from which 150 cases were selected. Only 129 could be examined carefully. Fifty cases, each, of feeble-minded, imbeciles and idiots were selected. External examination showed few changes; unilateral ptosis was found in two feeble-minded children and in one idiot; strabismus, in one feeble-minded child. Pupillary reflexes to light and accommodation were present in all but were sluggish in the idiots. Rigidity of the pupil was found in one idiot. Acuity of vision, extent of the fields of vision and refractive errors could not be determined owing to mental defectiveness of the patients. Four cases of myopia, three of hypermetropia and 15 of astigmatism were found. For various reasons, in only 106 of the cases could the fundi be properly examined. Of the 29 feeble-minded children whose eyes were examined only 9 showed normal fundi. Pallor or edema were present in 7 cases; indistinctness of the disc and well-marked neuritis in 1; atrophy in an early stage in 6; dilatation of veins

in 4. Of the 24 imbeciles examined, 15 were normal; 4 showed pallor or edema; 1, slight indistinctness of the disc and 1 well-marked atrophy. Of the 53 idiots examined, normal fundi were found in only 2, pallor and edema was found in 13 cases, general congestion in 1, general pallor in 8, optic atrophy 3, dilated veins in 1, choked disc, thrombosis of the central vein, retinal congestion, retinal hemorrhage in 1 each.

The conclusion of the investigators is that there is a well-marked neural as well as psychic degeneration in the great majority of all cases of idiocy. The research is submitted as a contribution to the clinico-pathologic study of degeneration. F. G.

A NEW BERTILLON INVENTION.—It is announced that M. Bertillon, head of the identification department of the Prefecture of Police in Paris, who has contributed so much to the methods for apprehending and identifying criminals, has recently invented a new contrivance for the detection of persons who are accustomed to prey upon the unsuspecting public. It is a machine for measuring blows struck by burglars, whether on a door or on the head of a human being. It is described as consisting "of two dynamometers, which are placed at right angles, so that either the pressure or the horizontal traction can be measured. The method in vogue enables the measurer to transfer the power of the blow upon any other instrument or person that may be selected.

"The practical value of the invention lies in being able to determine positively in cases of men who have been arrested on suspicion only whether they could have dealt a certain kind of blow with a supposed weapon. This is considered as being of the greatest possible use to the police in detecting crime and in the solving what heretofore have almost been impossible problems to be dealt with. The thief and the thug will be the more readily detected with M. Bertillon's latest invention." J. W. G.

THE DETECTIVE BRANCH OF THE POLICE SERVICE.—Daniel G. Slattery, secretary to former Police Commissioner Bingham of New York City, is the author of an article recently contributed to the Boston *Transcript*, dealing with the poor quality of the American detective force. In the first place, he says, the profession is too poorly paid. New York City pays its best detectives $2,000 a year. No other city pays more, and the average is about $1,000. The force is usually recruited from the ranks of laborers, and the wonder is that the results are as good as they are. Speaking of the "stool pigeon" (an informer who has no sense of moral responsibility and who will "peach on a pal as soon as he would on any other thief"), Mr. Slattery says:

"The 'stool pigeon' detective is a necessary evil and always will continue so. No detective force of any size could get along without 'stool pigeons,' unless the men who composed the force were all high-grade men with the mentality a first-grade detective ought to have. The ideal force would be one that was evenly made up of both kinds of detectives. The brainy sleuth then could do the reasoning and the analytical work that would be sure to produce results, and the 'stool pigeon' detective could keep on doing what he has been doing for many years. The class of men who are doing detective work in every city of any size would not amount to shucks—some of them don't as it is—unless they could get information from thieves. The thief who becomes an informer expects something in return and he gets it either in money or favors. The detective cannot afford to pay for this information out of his own pocket,

but many of them do, and are never reimbursed by the city that employs them, for there is no provision in the law for spending the tax-payers' money this way. The result is that the average detective is prone to receive rewards on the sly when he ought to be above such a thing. The 'stool pigeon' mode of doing detective work will never be put on a proper basis until every city sets aside a fund to pay police informers.

"A 'stool pigeon' does not have to be a thief necessarily, but he generally is one. Dive-keepers and owners of resorts that thieves frequent make first-class 'stools.' Most any liquor dealer who does not observe the excise law strictly can be driven into the 'stool pigeon' class by the police making him obey the law while his competitors are allowed to disregard it. If he complains of police activtiy he can be easily induced to impart information to the police on the understanding that he will not be molested any more than his competitors. Such is the common way of turning an ordinarily decent saloon-keeper into a 'stool.' The dive-keeper is a willing informer, for he knows the easiest way to avoid trouble is to give the police the information they seek.

"There is no getting away from the value of 'stool pigeon' information. Whenever you read of a detective being around when a crime is being committed, you are safe in assuming that they are on hand because of a tip, and that it is 'stool pigeon' information that causes them to be on the job. This is invariably so where arrests of criminals are made while they are in the act of committing a robbery of any sort." J. W. G.

PROPOSED CODIFICATION OF THE CRIMINAL LAW OF ENGLAND.—It is announced that the Lord Chancellor has introduced the first instalment of a scheme for codifying the whole criminal law of England. The work is to proceed by stages, the whole project to be brought forward in sections. The London *Times*, in commenting on the project, remarks that the advantages of codification are very much less exaggerated now than formerly. That there are manifest advantages, however, the *Times* readily admits. Thus it says:

"But it is surely justification enough of such a work that the majority of the indictable offenses in this country are dealt with by tribunals not composed of lawyers. The chairman may be, and the clerk always is, a lawyer, but the bulk of the Bench, who are not, may fairly claim that they shall have some authoritative statement of the law which they are called upon to apply. If further justification were needed, it is found in the fact that in the very process of codification criminal law is necessarily rationalized; absurdities and solecisms are almost automatically expelled. It is, too, a great opportunity for bringing the law into accord with public opinion, the best security for its being obeyed. Nor need we, on the other hand, take it for granted that codification means petrifaction or ossification of the law, which is one familiar objection. The experience of modern countries which have adopted codes is not to that effect. In these days the danger that there will be too little legislation, too great a tendency to respect what has once been enacted, is very small." J. W. G.

PROPOSED INDETERMINATE SENTENCE LAW IN RHODE ISLAND.—At the recent session of the Rhode Island General Assembly a strong effort was made to secure the enactment of a law providing for the indeterminate sentence in the case of persons sentenced to the state prison for offenses other than murder, manslaughter, arson, burglary, robbery, and rape. The maximum term prescribed by the proposed law was not to be longer than the maximum term fixed

by law as a penalty for such offense and the minimum term was not to be less than one year. In the case of persons, however, having been already twice convicted and imprisoned in the penitentiary, the court was required to sentence the offender to a maximum term of thirty years. The chairman of the State Board of Charities, one other member designated by said board, and the attorney-general were to be constituted a board of parole, with authority to release on parole any convict having been in confinement for a period not less than the minimum term, if, in the judgment of the board of parole, the prisoner was likely to lead an orderly life if set at liberty. J. W. G.

CRITICISM OF THE BOSTON JUVENILE COURT.—The *Juvenile Court Record,* in its March and April issues, criticizes the procedure of the Boston Juvenile Court as being not only contrary to sound public policy but as being in violation of the law under which it was created. "The fact is," says the editor of the *Record,* "the Boston Juvenile Court is one in name only. It is a criminal court of limited jurisdiction. It has no civil nor chancery jurisdiction. The procedure of the court is wholly illegal and not conducted in accordance with the law. The rights of parents are not safeguarded under the law. We should bear in mind at all times the fact that the American system of government is controlled and directed by laws, not men. It cannot be too often nor too strongly impressed upon those who administer a branch of the government. Where a proper spirit and good judgment are followed as guides, oppression can and will be avoided."

"The law which the Boston Juvenile Court administers is defective. It deals, so far as the delinquents are concerned, solely with the child. The parent is not made a party to the proceedings, nor his rights adjudicated. He is simply notified of the proceedings. The Massachusettes law, so far as the wayward and delinquent children are concerned, reverses the common law and refuses in a great measure to follow the rule in other states, which is that the child must first be found wayward or delinquent, and, second, that the parent must be found unfit, unable and unwilling to properly provide for his child. The rights of the parents are only incidentally recognized. The general rule is that parents have the right to the custody of their children, which the law should not only recognize but enforce. It should be of equal value as property rights and the right of life and liberty. No parent should be deprived of his child until he is proven to be unfit or unable to properly care for the child. These general principles are recognized in Massachusetts where parents are able to protect their rights. Where they are not able to do so, then the state in its majesty and power should apply with greater care the same rules and laws that apply to the person of intelligence and financial standing. . . .

"In the light of the authorities, and in view of the fact that a child may be taken from its parents and its care, custody and education transferred to strangers, who at best can only supplement that parental love and affection that is imbedded in the hearts of all true fathers and mothers, it would seem that the law should be safeguarded in such a way as to protect the rights of both parent and child. Notwithstanding these great principles and questions involved, the Massachusetts laws which are administered by the Boston Juvenile Court are so loosely drawn that only one parent need be notified of a case that is pending in court, and then only where such parent resides within the city or town where such child is found." (Sec. 4, Chap. 413, Acts of 1906, Mass.)

J. W. G.

## AMERICAN BAR ASSOCIATION ON TECHNICALITIES.

THE AMERICAN BAR ASSOCIATION ON REVERSALS FOR TECHNICALITIES.—Two years ago the American Bar Association appointed a special committee to suggest remedies and formulate proposed laws to prevent delay and unnecessary cost in litigation. Among the members of the committee were Everett P. Wheeler and Henry D. Estabrook of the New York bar, Joseph H. Beale of Boston, Charles E. Littlefield of Portland, Judge Charles F. Amidon of the United States District Court and Professors Roscoe Pound of Chicago, William E. Mikell of Philadelphia and John D. Lawson of Missouri. A bill prohibiting reversals for errors which do not result in miscarriages of justice and for introducing other needed reforms in our federal procedure was prepared by the committee, adopted unanimously by the Bar Association and is now before Congress. In the last issue of the *Journal* we commented in some detail on the provisions of this bill. In the course of the debate in the association on the provision relating to reversals, Stephen H. Allen of the Topeka, Kan., bar, formerly chief justice of the Supreme Court of Kansas, stated the proper attitude of the legal profession in the following words:

"These sections go straight at the evil that has been, and is, a great reproach to our profession and to the administration of justice in this great country. We may just as well face the proposition now as later that the general consensus of opinion of the people of the United States is opposed to the technicality that so often disposes of trials and causes retrials, and often trials multiplied many times, because of the disregard of a simple old-time rule of procedure that has no foundation and no merit in fact. The amendments that are proposed by this committee seek to place substance above form. We lawyers learn our different systems of procedure, we try to learn the equity rules, the admiralty rules, bankruptcy rules, the different common law rules and the code rules of all of the different states, in order that we may fit ourselves to practice in the federal courts; but we are confronted with a chaotic condition so far as the mere rules of procedure are concerned. Of course, I am strongly attached to a strict adherence to the law as any gentleman here, but I am utterly opposed to having the great profession to which we belong open to the charge of being mere pettifoggers in every court, from the highest to the lowest."[1]

Frederic W. Lehmann of the St. Louis bar and president of the American Bar Association, speaking along the same line, called attention to a recent decision of the Supreme Court of Missouri (*State v. Campbell,* 210 Mo. 202), in which the Court granted a new trial for the omission of the article *the* from the indictment. Using this case as an illustration of the perils to which technicalities may actually lead in practice, he said: "Let me put in concrete form what is aimed at by this report. A man having a young woman under his protection as his ward ravishes her. Upon indictment by the grand jury and upon trial by the petit jury he is found guilty. Upon appeal the conviction is set aside, because by carelessness of the draughtsman of the indictment or by the oversight of a copyist the definite article *the* was omitted from the concluding phrase of the indictment. Suppose, then, a similar crime was committed in my neighborhood, and the natural resentment that such a crime provokes in the breast of every man would kindle the people to do mob violence against the offender. Let me come out and try to quiet that mob and say:

[1]American Bar Association Reports, 1909, p. 71.

'Take not justice into your own hands, but leave it to the orderly administration of the law.' What do you think would be the answer? 'We have no respect for a law which puts the definite article *the* in sanctity above the chastity of our wives and daughters.' That is what is aimed at in this report. That is the purpose of it, to make an end to those things which bring the law into contempt and disrepute, and which make you and me ashamed of it when we are arraigned at the bar of the common sense of mankind. It is a duty that we owe to ourselves and our country to bring the law of the land into harmony with its good sense and its best conscience. That is the purpose of the bill, and no other. We invade no constitutional rights. We simply stand upon the rights of society and insist that they shall be regarded here. I submit that you will deal a severe blow to the utility of this association if you go upon record as continuing through this generation not the substance of the common law, but the casuistry and frailties imposed upon it in the dark days of the past. It is our duty to relieve the law from them. And that is the purpose of this report."[2]

J. W. G.

PROBLEMS OF INSANITY.—Dr. Adolf Meyer, in the Journal of the American Medical Association for June 11, discusses the problems of the physician concerning the criminal insane and borderland cases. According to Dr. Meyer most lawyers consider insanity as a condition characterizing a more or less final subdivision of humanity which is, or should be, fenced in by asylum walls. He thinks that insanity is not a disease in the sense in which tuberculosis or leprosy are diseases, but that it is a condition to which a number of totally different diseases may lead. As we are not dealing with a definite unit but with widely different disorders, Dr. Meyer thinks that we should speak of "insanities" rather than of "insanity," the link between the various forms being found in the necessity of interference with the patient's individual control and legal responsibility. The patients get themselves or their friends into innumerable difficulties until the point is finally reached at which they have to be checked. Where the danger is acute and great, control is easily managed, but in many cases patients are quite as unable to control themselves, as the more violent cases, yet are able to remonstrate and resist in such a way as to appeal to their fellow citizens and to demand legal consideration. General hospitals are unsuitable for such patients. Often merely a quiet, orderly life with occupation and rest is sufficient. The only places available for such patients are private sanitoria and state institutions, admission to which, Dr. Meyer says, is difficult on account of the barbarously inconceivable fence of laws regulating admission to those institutions which alone are admittedly equipped to give help to the patients. The whole conspiracy of facts and imaginations and traditions has created a class of humanity under a special legal ban called forth for the protection of a few cantankerous individuals where all that is necessary is the application of the quarantine principles and provisions for legal reinforcement of medical persuasion and advice. Dr. Meyer holds that the control and restriction of the insane should be based on the quarantine principle rather than on the principles of criminal law with its provisions that nobody can be punished for a thing that has not been done. He holds that it is an anomaly to require a legal decision for admission to a hospital when there is not the slightest objection on the part of anyone "merely to do justice to the rail-

[2]Ibid, p. 78.

roading yarns of the dime novel type or to relieve the superintendent of responsibility."

Considering criminal acts on the part of the insane, Dr. Meyer says that the bulk of morbidly determined crime is attributable to states of defective or uneven abnormal development. Certain forms of imbecility and defective balance are called moral insanity. In this class are found thefts, forgery, swindling, sexual assaults, exhibitionism, perversion, acts of revenge and spite, etc. The practical side of the question of the criminal insane is to determine not so much what crimes occur among the insane as what shall be done about certain crimes in which the issue of insanity is raised. Dr. Meyer assumes that the aims of the criminologist and of the judge are, one, to ascertain the facts; two, to determine the guilt; three, to assign the punishment and, four, to bring about the effects expected from punishment. The only safe statement, he thinks, is that responsibility is liability to punishment. The aim of punishment should be more than retaliation and correction. It should include prevention and protection of society. The individual should not be punished for acts not committed or for mere intentions, yet the abnormal intention should be corrected. These intentions which are in the flesh and blood of the insane individual call for action for the protection of society. Social quarantine is the only hope for the future. Actual detention of anti-social elements and the prevention of their propagation are as much a duty as is the quarantine of the leper or smallpox patient or the carrier. The question which arises in every case and which should be addressed to a competent expert or commission of experts is, Should the mental disorder or condition found in the patient modify the disposal of the case? Is the person fit to undergo the ordinary course of justice? Will he need other measures for prevention than the punishment, which the law considers a good enough method of disposal for the average case? Special colonies for special types should be provided, but this is probably a long way off. The law must give more clearness as to what it wants and must deal with diseases according to the principles of disease rather than with the rules of evidence. Where the defense of the criminal is the main thing and the plea of insanity is only the means of saving him from the consequence of his act the procedure is usually from the start a perversion of psychiatry. Physicians are called as partisans not as witnesses of fact. No impartial official record is kept nor is the prisoner under the constant observation of trained impartial observers. The physician's duty is to determine and report the mental condition of the accused. Dr. Meyer concludes that the solution of the medico-legal problem of mental disorders lies in the further development of the quarantine principle, medically and legally; that in handling criminals presenting mental disorder jurisprudence will have to develop rules of preventive care besides the rules concerning acts already committed; that the question of mental disorder should not be settled under the head of guilt only; that in order to meet the problem of partial responsibility in crimes of passion the law should create better alternatives than the unwritten law and that the equity procedure should be substituted for an unconditional declaration of not guilty, and that written statements of facts and opinions by competent experts are the only means of establishing standards. F. G.

## CHIEF KOHLER ON TREATMENT OF CRIMINALS.

CHIEF KOHLER'S IDEAS ON THE TREATMENT OF CONVICTED CRIMINALS.—At the meeting of the International Association of Chiefs of Police at Birmingham in May, Chief Kohler of Cleveland delivered an address on "The Ideal Treatment for Reformation of Those Convicted of Crime." After reviewing the results of his "golden rule" policy in the treatment of criminals in Cleveland (described in the July number of this JOURNAL) he entered upon a defense of the indeterminate sentence for all except the most hopelessly hardened offenders. He said in part:

"After many years of absorbing study of this great criminal problem, I am thoroughly convinced that no human being, whatsoever his crime, should be sentenced to a definite term in prison. For this, there are many reasons. Imprisonment, as inflicted to-day, has proven worse than useless. In almost every case it releases the criminal a more dangerous menace than before his incarceration. Our criminal law aims to benefit society. In this it fails. It should aim to benefit the criminal. In this it could succeed. As well might we sentence the lunatic to one month in the asylum, or the victim of typhoid to fifteen days in a hospital, at the end of these periods to turn them loose, whether mad or sane, cured or still diseased.

"The criminal court should determine but one thing: Has he, or has he not, committed the crime of which he is accused? If guilty, the one and unvarying sentence should be banishment—no money fines. The criminal code should be stripped to a bare list of the acts constituting crimes and misdemeanors, and provision made for a uniform treatment of all those convicted. Banishment, which should be spent in prison, should be absolutely indeterminate. By his own deed a man has proven himself unworthy to dwell among his fellow men. He must remain apart from them until restored by citizenship by a 'court of rehabilitation.' It has required a judge and jury to deprive him of his liberty, only by a judge and jury should he be restored. The second judge and jury should form the court of rehabilitation. It must be free from sentiment, having nothing to do with pardon, remain uninfluenced by political power or the prisoner's friends, be actuated only by absolute justice, and every evil of the criminal law will disappear.

"Prison life should be one, not of suffering, but of preparation—preparation for liberty. Independence, courage, right thinking, mental discipline—these are the qualities he will need if he is not again to fall. The criminal law should not be for society, but devote itself to the reformation of the criminal. Clarify the thoughts of the criminal and he ceases to be a criminal.

"My experience with persons confined in prisons and penal institutions are that the average man in prison is not so radically wicked as he is abominably weak. He is generally the mother's favorite son.

"At the trial which deprived him of his liberty, the reasonable doubt was in the defendant's favor; the burden of proof was upon the state. At the second trial in the court of rehabilitation this is reversed, the burden of proof being upon the man. Hypocritical religious protestations will not avail, nor promise of future good behavior. He must give proof of reform accomplished. In the criminal court he is every moment on the defensive. He tells nothing, admits nothing, gives no clue to his past. In the court of rehabilitation this is also reversed. Perjury may save a man from prison, only truth can get him out.

"In the first trial it may have been impossible to verify or disprove his

claims. In the second, his prison conduct is a matter of record, and his only hope rests in telling the truth, the whole truth, and nothing but the truth, as to birth, parentage and training; his social, business and criminal career. A lie—which disproves reform—means a continuation of banishment, and he knows it.

"Under the present system the young tough who commits a crime and is sent to prison 'sulkily waits for the expiration of a fixed period.' Under the ideal system he would understand that in self-improvement lay his only hope for freedom.

"The moment the door closes on him you have a man who longs with all his soul for liberty. Make him understand that liberty can never come except through himself and note the mental difference. No longer are thoughts and conversations the cleverness and mistakes in crime, or the planning upon revenge when liberated. He finds offered him an education, most certain preventives, and cures for crime. There are lectures and classes to attend and work to do by which there is money earned and saved. He is given opportunity to demonstrate his sincerity by industry, by ambition, by kind acts, by solicitude for his fellow prisoners, and for those outside whom he has caused to sorrow. Officials, teachers, the overseers in the workshops, all are his friends, not mere jailers. And in time, upon their advice, he moves his case for trial in the court of rehabilitation.

"Under the proposed system, society would be absolutely protected against him as it is now protected against the hopelessly insane. The habitual criminal would remain banished, for after several convictions no court of rehabilitation would ever again intrust him with his liberty.

"The death penalty would be abolished. But . . . the court of rehabilitation would rarely release the murderer who had plotted and calculated even after long imprisonment; it might give another chance to him that had killed in anger and with provocation, liberation coming after banishment during which he had proved strengthened self-control.

"I believe that nearly all rehabilitated men would become good citizens because the state has made them want to be such, and has given them the means to carry out their wish. I believe that in time society would be as free of crime and the criminal as is possible to any human institution. In place of the damning character to-day given a man by a prison record, it is not beyond hope that it may become in itself a recommendation, a proof of difficulties overcome, a guarantee of present ability and of future faithfulness. To-day, imprisonment is known to be futile, hence the restitution of liberty carries not the slightest suggestion that the man is in any sense more trustworthy than before. Under the proposed system, the mere fact that he has been set free would be proof of reformation." J. W. G.

PROPOSED CRIMINAL CODE FOR LOUISIANA.—There has recently been submitted to the legislature of Louisiana projects of a code of criminal law, a code of criminal procedure and a code of criminal correction, prepared by a commission of which Hon. Robert H. Marr of New Orleans is chairman. The draft of the code of criminal law embraces 639 sections, the offenses dealt with therein being classified under twenty-seven different titles, individual crimes making up each group being arranged in chapters under the appropriate title. The provisions

of the code of procedure embrace 633 articles and those of the code of correction eighty-six articles.

The foundation of the penal system of Louisiana was laid in the Crimes Act of 1805, many of the provisions of which are still in force. Several revisions of the statutes have been made, the last authoritative one being that of 1870. The legislature at each successive session since 1870 has added new crimes so that the volume of criminal legislation has grown to be very large and, as might be expected, there are numerous contradictions, incongruities and inconsistencies. Under the existing law, for example, it is a greater offense to shoot at a man than to shoot him with intent to murder; to assault with intent to rob than to actually commit robbery. Out of this mass of legislation the commission has sought to construct a harmonious system by elimination, compression, amendment of penalties and change of verbiage. The commission believes that there is a decided advantage in having the entire criminal law of the state in a compact body so that lawyers and judges will not have to search out the law as it lies scattered through an enormous mass of legislation and many volumes of reports. It has carefully defined all offenses as well as numerous terms employed in the criminal statutes. The need of such definitions was well shown in the recent Treadaway case where the Supreme Court nullified the anti-concubinage law because the state had failed to define, as most of the southern states have done, the meaning of the word "negro." It may be interesting to note that the proposed code defines the term "negro" to include all persons of one-sixteenth or more negro blood, provided that whenever a person is reputed to be colored the burden of proof shall rest upon him who alleges the contrary and that whenever he is reputed to be white the burden of proof shall likewise rest upon him who alleges the contrary. The existing criminal procedure of Louisiana is very complex, many of its provisions being uncertain and illy defined, and much of it being entirely judge-made. The commission has wisely endeavored to introduce as far as possible simplicity and certainty and has, in many instances, we believe, recommended changes that will do away with miscarriages of justice. Thus it is enacted that while an indictment must state every fact and circumstance necessary to constitute the offense, it need do no more. It is declared, furthermore, that no indictment shall be held insufficient for want of the averment of any matter unnecessary to be proved, nor for the omission of useless words and phrases, such as "feloniously," "unlawfully," "with force and arms," etc., etc. In view of the practice of the supreme courts of some of the states in overruling the judgments of trial courts because of mere verbal omissions such a provision is most timely. Moreover, it is declared to be sufficient in every indictment for murder to state that the defendant did murder the deceased, the other verbiage and circumlocution that usually encumbers the indictment being unnecessary. Finally, an important reform already introduced in a number of states is the provision which allows the court to amend an indictment when there is a variance between the language of the indictment and the evidence offered, so long as the cause of the defendant is not prejudiced thereby. An important reform proposed relates to the procedure in insanity cases. Thus it is provided that whenever a plea of insanity shall be filed a commission of lunacy shall be constituted to determine the question of sanity. That is, insanity shall be a special plea and must be set up and tried before and independently of the trial of the plea of guilty. With

regard to challenges the commission wisely, we believe, takes the view that there is no sound reason why the defendant should be allowed a greater number than the state. The proposed code, therefore, provides that the state and the accused shall have an equal number of challenges—twelve—in every criminal case.

A provision which ought to be a means of removing a growing evil is article 398, which empowers the judge to stop the prolonged, unnecessary and irrelevant examination of a witness, whether such examination be direct or cross. A provision which will commend itself to all enlightened minds is one which provides that hereafter all executions of the death penalty in the state shall take place within the walls of the penitentiary, and that as soon as the necessary facilities may be provided executions shall be by electrocution. The proposed code also provides for the indeterminate sentence and for the release of first offenders on probation, but leaves it entirely within the discretion of the judge as to whether he shall impose such indeterminate sentence or shall release on probation or shall sentence the convict to a fixed term.

The project of the commission represents the first attempt to provide for the state a code of prison discipline. "We have," says the commission, "statutes on commutation and statutes providing that every person sentenced for crime shall be made to labor. But there is practically no legislation governing the treatment of prisoners. The provisions of the Code of Criminal Correction on the subject of commutation of sentences is supplemented by providing for the release of prisoners on parole, and the system of commutation is itself perfected by providing for a system of marks so that the amount of commutation, within the legal limits, to which any prisoner shall be entitled shall depend altogether upon the conduct of the prisoner. Convict labor is the least productive of all labor, and the commission has believed that, whereas the resources of the state will not permit the setting aside of any money for the payment of convicts, a diminution of the term of imprisonment based upon the labor and the conduct of the convict would be productive of as good results as the payment of wages. If the convict knows that by good conduct and that by attention to his duties he will shorten the length of his imprisonment, the chances are that he will keep on his good behavior.

"The present law provides for the release of life convicts at the expiration of fifteen years, provided that not more than a certain number of such convicts shall be released in any one year. This provision is neither just nor logical. The commission has, therefore, provided that sentence to life imprisonment shall for purposes of commutation be considered as being for twenty-five years. That is to say, it will be possible for the life convict by earning the maximum commutation for good behavior to be released at the end of about seventeen years."

Finally, it is provided that tubercular prisoners shall be separated from other prisoners and that insane convicts, persons acquitted by reason of insanity and persons not prosecuted by reason of present insanity, shall be kept detained in an asylum for the criminal insane. The commission recommends that a constitutional amendment should be adopted providing for the creation of juvenile courts, but providing further that the jurisdiction of these courts shall be such as the legislature may by law establish. "To prohibit the punishment for rape, murder or other felony of a youth up to the age of seventeen years is to encourage crime. A negro male of sixteen years is a mature man, and to say that when

he commits a felony he is merely a 'delinquent,' and shall not be treated and punished as a criminal, is to expose society to very grave dangers." J. W. G.

TRIAL BY JUDGE AND JURY.—Under the above caption, Henry Clay Caldwell judge of the United States Circuit Court of Appeals for the Eighth Circuit, protests, in the May number of the *American Federationist,* against the tendency of judges, and especially of federal judges, in their public addresses to exalt the office of the judge at the expense of the jury. Judge Caldwell departs from the usual custom for federal judges and presents what is in some respects a very remarkable defense of the jury system. He starts out with a criticism of the uses to which the injunction is now being put and declares that it is being employed to undermine the constitutional right of trial by jury. The writ is now used for purposes, he says, which bear no more resemblance to the uses of the ancient writ than the milky way bears to the sun. Formerly it was used to conserve property in dispute between litigants, but in modern times it has taken the place of the police powers of the state and nation. It attacks and nullifies state laws upon pure questions of fact, which it refuses to submit to a jury. By means of it the judge not only restrains and punishes the commission of crimes defined by statute, but he proceeds to frame a criminal code of his own by which various acts, innocent in law and morals, are made criminal, such as standing, walking or marching on the public highway. The extremely erroneous view is beginning to prevail, he says, that the President of the United States cannot enforce the law without first obtaining the consent of a federal chancellor.

Passing to a consideration of the utility and value of trial by jury, he declares that its immense superiority to any other mode of trial in criminal cases is indisputable. The criminal law takes no note of moral justification, but only legal. It is the province of the jury to correct this defect. Thus, it will convict the assassin, but not the girl who kills her seducer. Immunity to murderers generally would soon dissolve the bonds of society; but juries instinctively feel that the social bond is not weakened, but rather strengthened, by the death of a seducer at the hands of his victim. Judges are as prone to be partial and oppressive, from personal or political prejudice, as juries and they are often more responsible for miscarriages of justice in criminal cases than juries are. Ten guilty men escape through the errors and mistakes and technical quibbles of the courts for one who escapes through an error of the jury.

"The twelve men summoned from the body of the people represent, in their several persons, different pursuits and occupations in life. Their prejudices, if they have any, resulting from their varied pursuits and environments, counteract each other; but the single judge, having no counterpoise, his bias and prejudice find full and unrestrained expression in his judgments. He is, besides, constantly struggling to force his decision into the groove of precedent, and to that end keeps on pursuing precedent and analogies and refining and refining until he grows 'wild with logic and metaphysics' and loses sight of the facts and merits of the case in hand. Juries performing casual service only can never acquire the bad habit of fixed tribunals of deciding mechanically upon some supposed precedent.

"Moreover, the consequences of an erroneous verdict by a jury are immeasurably less than an erroneous verdict by the judge; for one jury is not bound by the error of a former jury, but the law of precedent will compel the judge to adhere to his error, for it is a rule of fixed tribunals that consistency in error

is to be preferred to a right decision." Judges, as judges of the facts, have all the faults but not all the virtues of juries. "When you impeach the impartiality and integrity of the jury you impeach the impartiality and integrity of the whole body of the people, from whom they are drawn, and of which they are a representative part. Our idea of the prejudices of men is gained by our own prejudices. The difference between a prejudiced man and an enlightened one is the difference between the man who opposes our views and the man who agrees with our views. It is the old aphorism on orthodoxy and heterodoxy over again. It is always implied in this charge against the jury that there *is* a tribunal that is free from bias, passion or prejudice, and that that tribunal is found in the judge. . . .

"It is said that jury trials protract litigation, but the errors that lead to new trials and appeals and writs of error and the reversals of judgments and protraction of litigation are the errors of the judges. Look into the reports and you will find that in the trial of commonplace cases the trial court is charged with the commission of from five to fifty errors of law, and frequently convicted on some of the charges. And the errors of judges are not limited to the courts of original jurisdiction. The appellate courts themselves are constantly falling into error. If one is curious to know the extent of these errors, let him consult Bigelow's Overruled Cases, where he will find that the appellate courts, as far back as 1873, had overruled nearly 10,000 of their own decisions. How many they have overruled since that time is not known. These are their confessed errors only; there still remain, we know not how many, errors not yet confessed, for judges, like all great sinners, never confess their errors until *in extremis*—and not then with that openness, fullness and frankness supposed to be essential to insure spiritual salvation to a sinner. In a volume of the reports of the Supreme Court of Nebraska is an official list of 111 cases previously decided by that court which have been overruled by the same court.

"Judges make hundreds of mistakes in deciding the law where the jury makes one in deciding the facts; and when juries do err, it is commonly owing to the mistake of the judge in instructing them erroneously or inconsistently on the law. A jury after receiving a two-sided charge from the judge were unable to agree and when they were discharged the judge asked them how they stood, to which their foreman replied: 'Just like your honor's charge, six to six.' When the judges learn to decide the law with as much accuracy and fidelity as juries do the facts, it will be time enough for them to indulge in censorious criticism of the jury for their supposed mistakes. Such action is not only a gross invasion of the rights of the jury, but it is an invasion of the constitutional rights of the suitor, who is entitled to have a jury in the box who will not be influenced in any degree in the honest and independent exercise of their own opinion by fear of censure or the hope of applause from the judge. The free, independent mind has one opinion, and the trammeled, dependent mind another opinion; and the free, independent mind is what every suitor is entitled to have in the jury box. . . ." J. W. G.

FOLLIES IN OUR CRIMINAL PROCEDURE.—Under the above caption, Charles B. Brewer of the Maryland bar calls attention, in *McClure's* for April, to some of the absurdities in our American methods of criminal procedure which are largely responsible for the failure to punish crime in this country. He cites the following examples from actual cases, either recently decided or recently relied on as precedents for "diverting the ends of justice":

Because the indictment charged that the crime had been committed on a "public road," and the evidence showed that, though constantly used as such, the road had never been dedicated to the state. (58 S. E. Reporter, p. 265.)

Because the stolen shoes were not a "pair," as charged in the indictment. (The thief, in his haste, had picked up two "rights.") (3d Harring, Del., p. 559.)

Because one member of a firm of three names from whom goods had been stolen was dead, and the indictment had named all three. (110 S. W. Reporter, p. 909.)

Because the indictment had charged the burglar with intent to commit a "theft" instead of intent to commit a "felony." (108 S. W. Reporter, p. 371.)

Because the indictment charged that the thief had entered the house of one Wyatt with intent to steal from him, and the defense was able to prove that Lamb also occupied the house and it was Lamb's property the thief was looking for. (101 S. W. Reporter, p. 800.)

Because the accused had been indicted for attempting to murder Kamegay instead of Kornegay, the real name. (103 S. W. Reporter, p. 890.)

Because the murdered man's name was Patrick Fitzpatrick and not Patrick FitzPatrick, as charged. (3d Cal. Reporter, p. 367.)

Because the indictment named a specific, though a correct, date, instead of saying "on or about" a certain date. (Pa. Lower Court, Montgomery Co., 1908.)

Because the lower court had failed to advise the jury that the thief had stolen the goods "feloniously" or with "criminal intent." (89 Mon. Reporter, p. 829.)

Because the indictment had not stated that a "black-jack" (designed especially for cracking skulls) was a "dangerous or deadly" weapon. (60 S. E. Reporter, p. 782.)

Because the indictment for murder charged that the deed had been committed "unlawfully and with malice," etc., instead of "with malice aforethought." (3. Southern Reporter, p. 337.)

Because the prosecuting attorney, typewriter or some state employe, in complying with all the other antiquated requirements in a string of words as long as your arm, had omitted "was given" in referring to the mortal wound. (68 S. W. Reporter, p. 568.)

Because the indictment of a murderer containing a staggering array of required verbosity did not conclude that the murder was committed "against the peace and dignity of the state." (45 Southern Reporter, p. 913. Alabama Case, 1908.)

Because another indictment equally verbose, and this time containing the clause "against the peace and dignity of state," had omitted the word "the" before "state" and was thus "fatally defective." (109 S. W. Reporter, p. 706. Missouri Case, 1908.)

As an example of the way in which the requirement in regard to the choice of words in the indictment and the constitutional requirement that no one shall be twice placed in jeopardy for the same offense may be abused, he cites the following case from South Carolina:

Two pianolas had been stolen. The indictment read "two pianos." Witnesses were brought in who testified that *pianolas* had been stolen, and not *pianos,* as charged. The indictment fell down and the accused was discharged.

A vigilant district attorney was on hand, however, and promptly had the accused rearrested, charged with stealing two pianolas. The "shrewd" counsel defending the accused had a new set of witnesses this time—experts. The experts were able to convince the court that, after all, *pianolas and pianos were the same thing.* The court ruled that, having been tried once for stealing pianos, the accused could not twice be tried for the same offense. The fact that two musical instruments had been stolen seems to have been overlooked.

*This time the unconvicted one went free.*

Speaking of the conduct of the trial after the jury had been selected, Mr. Brewer remarks that 'in most serious cases the counsel begin a series of absurd wrangles about the choice of words in the indictment, about what constitutes admissible evidence, whether it shall be heard when offered, later on, or at all. It has often been remarked that during this stage of the proceedings the judge, and not the prisoner, is on trial—that a trap is being set for him, an examination in which, if he passes perfectly on a thousand and one questions, but slips up on only one, often immaterial to the guilt or innocence of the accused, the counsel for the accused has 'scored' and a new trial is assured."

Mr. Brewer then goes on to criticize the jury system and especially the unanimity requirement as being responsible for the escape of many criminals. He attributes a large part of the inefficiency of the courts to the "antiquated tools and machinery with which we compel them to work, in that numerous legislative bodies have patched, repaired and added to them from time to time, instead of replacing or revoking them." These, with the "tricks of shrewd counsel and other means at the criminal's command," place his interests first and the safety of the general public, for whom the laws are framed, in the background. The protection thrown around the criminal by our present system, he concludes, has made it well-nigh impossible to convict the guilty. J. W. G.

COMMITMENT AND DISCHARGE OF THE CRIMINAL INSANE.—In an address before the New York State Bar Association last year, Dr. Robert B. Lamb, medical superintendent of the Matteawan State Hospital, discussed some needed reforms connected with the commitment and discharge of the criminal insane. Dr. Lamb divides the so-called criminal lunatics into two classes: First, those who become insane after conviction and while serving sentence; and, second, those charged with crime and whose insanity is established at some time previous to conviction, but who are not put on trial because of existing lunacy. Of the latter class, only five were committed by the courts of New York to the state insane asylum in 1888; in 1908 the number was forty-three—an increase out of all proportion to the growth of population or the increase of lunacy. His conclusion is that many persons are now being committed to asylums as lunatics, rather than to prisons and penitentiaries, as criminals. What is more, we are, Dr. Lamb believes, only at the beginning of this practice and if the existing procedure is not changed, the asylums are going to become the refuge for a large number of criminals who ought to be sent to the penitentiaries.

Speaking of the existing procedure of commitment, Dr. Lamb observes that "under the present law any reputable practitioner of medicine may be a qualified examiner in lunacy if he has had three years of practice in medicine. He may never have seen a single case of lunacy during these three years. Obscure forms of mental disease are as unfathomable to him as to his wife and children. The field of lunacy is now largely specialized. To recognize disordered mental

processes requires actual and practical experience in this particular line of work. While the family physician may well determine a serious mental change in those of his patients whom he is called on to treat, it is a quite a different matter to act as official adviser to a court in the determination of the mental status of persons charged with serious crime, the crime often standing as a product of a brain disease not easily detected except by long and specialized experience. It seems to me that the whole committal would be greatly strengthened if physicians acting as such examiners on order of the court were required to have had special training in hospitals treating the insane, and, in addition, to pass a rigorous and practical examination in diseases of the mind. The great enlargement of our state hospital service, with numerous withdrawals from the medical branch, has given nearly every section of the commonwealth a certain number of available men thoroughly competent to do this particular work, and quite able to successfully meet any reasonable examination."

He also points out very forcibly the inadequacy of the present legal definition of insanity. While the legal definition has remained the same for many years, the medical conception has broadened very greatly. The legal definition should either be changed, so as to include cases showing a history of faulty, neurotic tendencies and other signs of degeneracy, or the old definition should be strictly adhered to and such cases as are included in this category should be committed to prison instead of to a hospital for the insane, as is now often done. Dr. Lamb also dwells upon the evils resulting from the too promiscuous use of the writ of *habeas corpus* in securing the discharge of insane criminals. During the year 1908 there were, he says, forty-one hearings on the writ of *habeas corpus* at the Matteawan hospital, as a result of which all but seven of the petitioners were discharged, fourteen of whom subsequently found their way back either to prison or asylum. In every case referred to a jury the finding was in favor of the lunatic.

Commenting on the backwardness of the law relating to insanity, Mr. Shelden T. Vicle, state commissioner in lunacy, on the same occasion as that on which Dr. Lamb's address was delivered, said: "When I studied law there still remained many old lawers who bewailed the fact that the old common law procedure with its technicalities, its refinements, its subtleties, had been swept away and a plain and simple procedure had taken its place. Fifty years ago the profession of the law led all other professions in the reform of its methods. Can we honestly say that it still leads? In the last thirty years we have had a new conception of theology; a new chemistry, a new psychology, a new psychiatry, have all been produced. The treatment of the ordinary insane under the influence of the new psychiatry has made wonderful advances. Surgery and medicine have been revolutionized. All the physical sciences have made marvelous progress. In that time has not the procedure in the criminal law, especially in its correlation with the insanity law, been more and more overlaid with technicalities, with refinements and with subtleties? All this has been done under the pretense of safeguarding personal liberty and the rights of the individual. Are not the community and the state neglecting their own protection?" J. W. G.

REPORT OF BRITISH DEPARTMENTAL COMMITTEE ON PROBATION OF OFFENDERS ACT.—The Right Hon. H. J. Gladstone, Secretary of State for the Home Department, in March, 1909, appointed a committee, of which the Right Hon. Herbert Samuel, M.P., was chairman, to inquire into the operations of the Probation of

Offenders Act, 1907, in England and Wales, and to advise methods of securing the better organization of the probation system and its more frequent employment in suitable cases. The committee, after holding thirteen meetings, hearing a number of witnesses and collecting information from other sources, made its final report on December 23, 1909.

The committee is unanimous in its conclusion that the Probation of Offenders Act has proved of great value in many cases and that it should be used more extensively. During 1908, of the 8,023 persons placed on probation in England and Wales, 6,194 had been charged with indictable, and 1,829 with non-indictable, offenses. Practically one-ninth of all offenders tried before courts of summary jurisdiction for indictable offenses were placed on probation. Less than five per cent of those released under the care of probation officers were returned to court for the imposition of further penalties.

The report lays special stress upon the importance of great care in selecting persons to act as probation officers. "The probation officer must be a picked man or woman, endowed not only with intelligence and zeal, but, in a high degree, with sympathy, tact and firmness." The committee urges the employment of salaried probation officers assigned by districts and assisted, when desirable, by volunteer or honorary probation officers specially qualified for such duties. The committee disapproves of using police officials for probation work.

It is recommended that in every petty sessional division one or more justices be given special oversight over the probation work of the district; also that an official at the Home Office be specially charged with the duties of keeping in touch with probation work, furnishing information with regard to it, issuing an annual directory of probation officers, and providing forms for use by courts and probation officers.

Various suggestions and recommendations are made by the committee concerning the probation order issued by the court and the duties of probation officers. A probationary period of less than six months is in most cases found to be ineffective, and the committee believes that in a large proportion of cases a term of one year or more is desirable. The chief danger in the administration of probation is declared to be too great laxity when the defendant's behavior is unsatisfactory. Probation officers in England and Wales, as in the United States, make preliminary investigations concerning the character and surroundings of defendants, in order to lay information before the court which will aid it in determining the most suitable treatment of those who are found guilty. The committee finds that some probation officers, in making such inquiries, investigate also the question of the innocence or guilt of the defendants. The committee disapproves of this practice, and points out that if the report of the probation officer is given to the court before a verdict is reached, it may influence its decision of the case. It is therefore recommended that probation officers withhold the results of their inquiries until after the defendant is convicted. Objection is found to the practice of using probation officers to collect fines from defendants in instalments, since this practice is said to be foreign to the purposes of probation and likely to detract from the personal influence of probation officers. The giving of material relief by probation officers is condemned.

The report is a valuable contribution to probation literature, and will undoubtedly aid in securing the extension and improvement of the probation system in the British Isles. A. W. T.