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Notes on Current and Recent Events

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Proposed Changes in the Criminal Code of France.—The most important of some changes in the criminal code of France, recently suggested by M. Julien Goujon, would make it the duty of the clerk of the court of assizes to keep a complete record of the entire testimony of all witnesses subpœnaed by both parties, when they appear for the first time before that court. The preamble of this proposition suggests further changes that contemplate important alterations in the president's examination. Within recent years this has, in most cases, come to assume the proportions of a real charge to the jury, whereas it should be nothing more than an impartial exposition of the case. Another proposal seeks to require the jury to accompany its verdict, in certain cases, with an enumeration of the precise points on which the decision is based, together with the testimony and evidence which led to the decision.[1]

Proposed Reforms in French Criminal Procedure.—The extra-parliamentary commission, established by the minister of justice, Berthon, has recently submitted to the French Parliament two proposed reforms in criminal procedure. The first proposes to regulate the provisional discharge of an accused person brought before the court of assizes. Until his appearance before that court, the commission suggests that the court of indictment shall have power to accord to him the benefits of provisional freedom. Moreover, after the accused has appeared before the court of assizes, he may still demand provisional liberty from the court of indictment provided the case is not definitely settled.

The second proposal intends to modify the procedure before the court of assizes. It does away with the act of indictment and replaces it by a revival of the oral statement of the representative of the public ministry. The purpose of this statement is to give the jury a general summary of the case, in order that they may follow more intelligently the testimony of the witnesses. The examination by the president is also eliminated and the court proceeds at once to an examination of the witnesses. Both parties are given the right to question the witnesses directly; that is, without appealing to the president and running the risk of his refusing to allow the question. The president, judges, and jurymen may likewise demand of a witness whatever information they may deem necessary.[1]

Establishment of the Criminological Institute of St. Petersburg.—On January 24, 1908, the new Criminological Institute of St. Petersburg was opened for the study of criminology and the allied sciences. It is the only private institution of the kind in the world, and its establishment was due mainly to the efforts of Professor W. M. Bechterew, the eminent Russian psycho-neurologist. The commission of specialists who worked out the plan of the Institute agreed upon the following fundamental principles:

The first work of the Criminological Institute as a special institution of learn-

[1]Furnished by Mr. C. O. Gardner.

ing must consist above all things in a broad, scientific study of crime, and of those social and economic factors which this abnormal phenomenon of the social life calls forth. Further, says Bechterew, "the Criminological Institute must provide for a fundamental systematizing of the scientific material which explains the problem of criminality. And for this reason the causes which generate and nourish crime must be investigated and the most useful means for rational combat against growing criminality must be found. Systematic research in the field of criminal anthropology and physiological psychology must not be neglected. In order to come in closer touch with criminals and thereby to become better acquainted with their peculiarities, it would be very desirable for the professors of the Institute to obtain permission to enter the prisons. Also it would be very useful to make observations upon the criminal youth who are pupils in the agricultural colonies."

The following subjects will be treated in the Criminological Institute: (1) History of crime; (2) Criminal sociology; (3) The combat against crime; (4) Criminal law; (5) The doctrine of judicial tribunals on criminal law; (6) History of juridical political doctrines; (7) Comparative history of law; (8) History of economic doctrines; (9) Legal medicine; (10) Criminal anthropology, and psychology of crime; (11) General psychopathology; (12) Forensic psychiatry; (13) Pathological psychology; (14) Hypnotism and doctrine of suggestion. J. W. G.

The White Slave Traffic Act.—An act of Congress, approved June 25 of the present year and known as the White Slave Traffic Act, prohibits the transportation from one state or territory to another, or from foreign countries, of women for the purpose of prostitution, debauchery or other immoral purpose, under a penalty of not exceeding $5,000, or imprisonment for a term of not more than five years, or both, in the discretion of the court. Any person found guilty of persuading, inducing, enticing or coercing any woman to go from one state or territory to another, or from any foreign country, for purposes of prostitution, shall be subject to the same penalty. If the female so enticed, or coerced, be under the age of eighteen years, the penalty shall be a fine of not more than $10,000, or imprisonment for a term of not more than ten years, or both.

The Act charges the Commissioner-General of Immigration with receiving information concerning the procuration of alien women for purposes of prostitution, in accordance with the terms of the international agreement of May, 1904, relating to the white slave traffic, and adhered to by the United States Government, June 6, 1908, and with exercising supervision over such alien women and with ascertaining who induced them to leave their native country. J. W. G.

Crime and Tattooing.—Tattooing was one of the specific characteristics which the late Prof. Lombroso declared definitive of his alleged "born criminal" type. Lombroso considered tattooing "one of the essential characteristics of primitive man and of the man who is still living in a savage state." He claimed that tattooing is very common among criminals, and interpreted it as an indication of atavism. In an article in the *Archives d'anthropologie criminelle* for April, 1909, entitled "Criminalite et Tatouage," H. Leale considers the relation between crime and tattooing, and finds its significance in the fact that the majority

of criminals come from the classes of the population which practice tattooing, and therefore it is natural that many criminals are found tattooed. The quality of the tattooing may, however, be of significance from the standpoint of criminality. In itself it is merely a manifestation of a coarse, primitive, but still normal make-up, but certain forms of tattooing and the subjects depicted by the process may reveal an abnormal make-up in that individual. Mr. A. T. Sinclair has recently made a valuable contribution to the subject of tattooing in two articles, one entitled "Tattooing—Oriental and Gypsy," in the *American Anthropologist,* for July-September, 1908, Vol. 10, page 361, and the other, "Tattooing of the North American Indians," in the same journal for July-September, 1909, Vol. 11, page 362. These two articles make abundantly clear the general and widespread extent of the practice. He says: "There is an immense territory filled with hundreds of millions of people, most, if not nearly all, of whom are tattooed, viz., India, Persia, Mesopotamia, Syria, Egypt; and the custom reaches back to the highest antiquity. From this district it is traced, step by step, in contiguous countries, or those separated only by seas, over farther India, all over the South Seas, Australia, China, Japan, Northeastern Asia, across Bering Strait, the Aleutian Islands, all over North and South America, the Antilles and all over Africa and Europe." Moreover, the practice, according to Mr. Sinclair, is growing in the civilized world, and is certainly not decreasing in the Orient. In America, particularly, it appears to be increasing.

Mr. Sinclair seems to incline to the view that in origin tattooing may be of religious significance, and quotes a number of references to it from both the old and new testaments, as well as citing its use in connection with other religions. He feels, however, that we are not warranted in drawing general conclusions as to its significance until more extensive investigations have been made. It would seem, therefore, that Lombroso's view of tattooing as a primitive characteristic, indicative of atavism when found among civilized peoples, was a hasty and not well-founded generalization, and that as to its essential significance we must withhold judgment until further study and investigation have afforded adequate material for theorizing. E. L.

Borstal (England) in 1910.—A very interesting report of the English reformatory institutions for boys and girls who have offended against the law, between the ages of sixteen and twenty-one, has been recently published by the Borstal Association, 15 Buckingham Street, Strand, London. There are three Borstal institutions: Borstal, Lincoln and Aylesbury. The system has grown out of experiments conducted by the Prison Commissioners (the governing body of all English prisons) since 1902, at Borstal and Lincoln. In 1908 the Borstal system was adopted as part of the penal system of the country, the reformatory purposes of the institutions being specified in language reminding one strongly of the laws establishing Elmira Reformatory. The methods are similar in many respects to those long established in American reformatory institutions. A special grade, corresponding in general to the first grade of our reformatories, gives special privileges, among them the chance to work outside the institution walls, unguarded. "The fact that an attempt to escape is hardly ever made is a testimony to the training and the discretion exercised in selection for the special grade." The Borstal boy has drill, gymnasium, trade instruction, schooling and an amount of recreation (games, newspapers, magazines, football, cricket) not generally found in American reformatories.

The Borstal institutions depend for their success on the spirit, sympathy and ability of the officers and staff. "It is a remarkable thing that not a single complaint has been made by any inmate to the Visiting Committee during the year of 1909." On release, the Borstal Association (formed by Sir Evelyn Ruggles-Brise) receives the boys, under a system closely resembling the developed parole systems of the American reformatories. The license under which the boy is released provides that during the unexpired portion of his sentence (which sentence cannot be longer than three years), and for six months longer, the released boy must satisfy the association that he is avoiding bad company and leading a sober and industrious life.

The summary of a year's results are interesting. Of 236 boys and five girls received by the association on their release from Borstal institutions, 191 were provided with clothes, and often with an outfit of tools, were placed at work, and had their wages supplemented when necessary; 28 were provided with clothes and arrangements made with former employers and relatives for employment; 6 could not be helped; 11 refused help; 5 girls from Aylesbury were placed in homes. Of the 241, 16 were known to be doing well in May, 1910; 7 were lost sight of; 20 were unsatisfactory; 30 had been reconvicted.

The statistics have a familiar ring, for the total of unsatisfactory reports within a relatively short time of release seems to be about the American proportion for the same period—about 25 per cent. Recently the association has established a shipping home, many of the boys showing the desire to go to sea. Other boys are being placed out on farms. Careful records are being kept of the dealings of the association with every boy. The association has recently undertaken the care of girls released from Borstal institutions.

The appendix of the report gives the Prevention of Crimes Act, 1908. The entire report is but eighteen pages long, and is worth sending for. O. F. L.

Prison Reform in California.—The State Board of Prison Directors of California complains that, although 10 per cent of the prisoners of the state are out on parole, and that nine-tenths of these are "making good," the number in prison is still too large, on account of the present lack of uniformity of punishment imposed by the superior judges of the state. One member of the board is reported as saying:

"While one judge will sentence a man for two or three years on the first offense, another will give a man for the same crime eight or ten years. The trouble is that a large number of judges are 'high livers,' and when their respective livers give them a little trouble the prisoner brought before them gets the worst of it. Why, there is one judge in Fresno County who made the statement a little over two years ago that the next man arrested for robbery, and brought before him, would get fifty years in jail, and the judge kept his word, for he sent a young fellow of 16 years of age to Folsom in December, 1906, sentencing him to fifty years' imprisonment for robbery on first offense That judge's name is H. Z. Austin. Now, if this young fellow serves his term, he will come out an old man, and all we can possibly do is to give him such training as prison facilities permit and perhaps parole him later.

"I am smarting under the gross injustice that is done to first offenders by judges of our state. If judges would give more moderate sentences to first offenders, instead of sentencing such men excessively and then write to this Board recommending parole and clemency for one reason or the other, or

because they realize that judicial errors have been committed, our state prisons would not be overcrowded to-day."

In a recent report to the Governor the board recommended the establishment of a reformatory for the state. In regard to plans for improving the methods of dealing with prisoners the president of the board has this to say:

"But as soon as our present plans of reconstructing San Quentin are completed we will have here a system which will be superior to any in vogue in other prisons in the United States. We will have three separate yards and prisoners will be able to go into their respective yards from their cells without passing through the other yards. When a prisoner is received he will be placed in the second yard, and then it will depend upon him whether he is to go up to the first yard or down to the third. But if he goes to the third he may work himself up again, as we are going to have a merit system.

"For the men of the first and second yards there will be no more prison stripes. They will be dressed instead in natty gray uniforms. We are ashamed of our present system, but it takes time to remodel things, and, considering our present equipment, there are no two prisons better conducted than San Quentin and Folsom." J. W. G.

Should the Death Penalty Be Abolished?—Apropos of the question of the abolition of the death penalty, a monograph by Charles A. Brown, without date or place of publication (49 pages), maintains that the death penalty is not necessary in the present state of society among civilized peoples. The sacrifice of life is illegitimate if the sacrifice of liberty is sufficient for the protection and development of society. Punishment by the indeterminate sentence answers all requirements for the protection of society. The death penalty has been abolished for political crimes, and is gradually ceasing in the more enlightened communities. The treatment of criminals affords an infallible test of the civilization of a people.

Taking a different position, Arthur Macdonald writes in the July, 1908, Journal of Sociology upon the "Death Penalty and Homicide:" "The death penalty has been enforced less and less, until it has ceased to exist in many countries. Its importance has been overestimated. Whether the death penalty lessens crime, especially murder, cannot as yet be demonstrated by statistics. In certain localities at certain periods the death penalty has been shown with great probability to lessen certain forms of crime, and therefore the probability of this effect has been increased for different countries under similar conditions. From a statistical point of view it is probable that the death penalty tends to lessen certain forms of crime. The opinion of those having long experience in dealing with criminals is favorable to the maintenance of the death penalty. Criminals, themselves, in their own organization for plunder make death the most frequent form of punishment. The most astute criminals, as robbers and bankbreakers, have often said that they prefer to operate where there is no possibility of suffering the death penalty. Arguments against the death penalty are largely theoretical and show a disproportion of sentiment. The fact that the death penalty has gradually ceased to be executed is no reason why it should cease altogether. The death penalty gives a a firmness to the execution of all the laws by a sort of radiation. Unnecessary and injurious notoriety given to executions by the press should not be allowed, thus avoiding a serious but unnecessary objection to the death penalty."

In this connection a brief monograph by Raymond Rosenmark, entitled, "Le Droit de Grace et La Peine de Mort," is interesting; published in Paris, France, in 1908. Monsieur Rosenmark, protesting against the prevailing habit of the chief executives of the French nation to commute the death penalty in the face of the fact that repression has never seemed more necessary, nor statistics more disturbing, states that there are, nevertheless, three excellent features of such commutation of the capital sentence. Such clemency may check immediately the results of a judicial error; such clemency re-establishes the balance between humanity and justice; and finally, a wise use of executive clemency may be employed to reward the good conduct of prisoners in shortening their period of imprisonment.

Monsieur Rosenmark then argues for the abolition of capital punishment, and the establishment in its place of "l'internement perpetuel," life imprisonment at hard labor. "In such abrogation of the death penalty it should be provided that the first six years of said life imprisonment should be in separate confinement, and that if during these six years the prisoner commits any new violation which would carry with it a criminal sentence, he should be condemned to separate imprisonment for life. O. F. L.

Sterilization of Criminals.—Dr. Frederick Green of Chicago has compiled the following bibliography of recent periodical literature dealing with sterilization of criminals:

Chicago Medical Recorder, March, 1909: "Sterilization of Criminals and Other Defectives by Vasectomy," *W. T. Belfield,* Chicago.

Virginia Medical Semi-Monthly, December 11, 1909: "Sterilization of Habitual Criminals," *C. V. Carrington,* Richmond, Va.

Journal of the New Mexico Medical Society, July, 1909: "Sterilization of Criminals and Other Defectives by Vasectomy," *W. T. Belfield,* Chicago.

Journal of the American Medical Association, December 4, 1909: "Vasectomy as a Means of Preventing Procreation in Defectives," *H. C. Sharp,* Indianapolis. (This paper is followed by a lengthy discussion.)

Southern California Practitioner, Los Angeles, November, 1909: "The Indiana Idea of Human Sterilization," *H. C. Sharp,* Indianapolis.

Journal of the Medical Society of New Jersey, December, 1909: "Sterilization of Confirmed Criminals, Idiots, Imbeciles and Other Defectives by Vasectomy," *W. J. Chandler,* South Orange, N. J.

Virginia Medical Semi-Monthly, December 24, 1909: "Sterilization of Habitual Criminals," *C. V. Carrington,* Richmond, Va.

Medical Press and Circular, London, December 29, 1909: "Proposed Sterilization of Certain Degenerates," *R. R. Rentoul.*

Northwestern Lancet, Minneapolis, Minn.: "Steriliaztion of Habitual Criminals and Degenerates. *Burnside Foster,* St. Paul. Same article in St. Paul Medical Journal, January, 1910.

West Virginia Medical Journal, Wheeling, W. Va., March, 1910: "Sterilization of Confirmed Criminals and Other Defectives," *J. R. Bloss,* Huntington, W. Va.

Virginia Medical Semi-Monthly, Richmond, April 8, 1910: "Hereditary Criminals—The One Sure Cure," *C. V. Carrington,* Richmond.

Medical Herald, St. Joseph, Mo., June, 1910: "Assexualization of the Unfit," *G. H. Bogart,* Brookville, Ind.

Pearson's Magazine, New York, November, 1909: "Hereditary Criminality and Its Certain Cure," *W. W. Foster,* New York.

Medico-Legal Journal, December, 1909: "Vasectomy—Crime Against Nature," a reply to the above article, *A. W. Herzog.*

Virginia Medical Semi-Monthly, August 26, 1910: "Vasectomy for the Defective Negro, with His Consent," *Bernard Barrow.*

The Survey, July 9: "What to Do with Criminals," *Walter N. Thayer,* Dannemora, N. Y.

An English Opinion of American Reformatory Methods.—Miss Elizabeth Sloan Chesser, an English physician and student of penology, after an extensive study of American and Japanese methods of caring for prisoners, has written an article in the *London Express* criticizing the English system and praising that of America.

"The English prison system," she says, "is primarily punitive. Any criminal system which makes punishment the first essential can neither prove deterrent nor reformatory and is consequently a failure so far as the cure of crime is concerned. Under our present system of dealing with criminals in this country, more than half the prisoners leave prison at the expiration of their sentence only to return again within a definite period. Imprisonment on present lines does not cure crime, does not lead to reformation and regeneration of the prisoner.

"Our system fails because it degrades, because it kills self-respect and self-reliance. It does not provide sufficient educative work, it subjects the prisoner to long hours of loneliness and introspection and tends to harden and confirm him in his evil course. If the aim of all true penology be the prevention of crime and the reformation of the criminal, we are years behind America with regard to this matter."

Miss Chesser declares that the development of the reformatory system is one of the most notable achievements of American penology.

"It was recognized," she says, "that the only way to protect society against crime was to reform the criminals and so prevent the manufacture of habitual criminals to prey upon the community. Gradually what is called the 'Elmira system' was evolved, and at the present time the prison of Elmira, in the United States of America, is recognized as the model reformatory of the world. The fundamental idea is not the infliction of punishment for crime committed, but the conversion of the prisoners into industrious and law-abiding citizens."

Her description of the New York Reformatory at Elmira is as follows:

"Elmira is a school rather than a prison, as we understand the term. The system is educational; the aim and ideal a training of mind, muscles and morals up to a certain standard. For this end ample, interesting, useful and educative work is provided.

"The reformatory contains, on an average, 1,500 young men from eighteen to thirty years of age. Inside the white walls which surround the central buildings the workshops are occupied from early morning until evening with squads of men working earnestly at their chosen trade, while others are gardening or farming or attending lectures, gymnasium or military drill. The reformatory is like a commune where the blacksmith, the bricklayer, the shoemaker and the plumber are all working for the common good. Each lad has to master a trade to fit him to earn an honest living on his discharge. He enters the reformatory

under the indeterminate sentence plan, which means that he must remain until he is fitted by education and moral training to go back to a life of freedom in the world.

"When a prisoner arrives at Elmira he is first examined by the superintendent and doctor, and is then 'graded' according to his physical, mental and intellectual standard. He is made to attend certain classes at school, he is put to learn a suitable trade and he is, if physically fit, recruited to the reformatory's military corps.

"All the prisoners are divided into three grades, which provides an excellent system of classification which we might adopt with advantage in England. A prisoner, on admission, enters the middle grade. With six months' good conduct, he advances to the first grade; by misconduct or lack of progress he sinks to the third grade, where he must remain until he has served one month with good conduct and obedience to the laws. When he has served his minimum sentence and been six months in the first grade he is eligible for parole, which means he may leave the prison to work at his trade outside under the guidance of a probationary officer.

"The day's routine is one of interesting but fairly hard work. The prisoners work in turn at the school of letters, the military department and the industrial school. The highest grade prisoners at the school of letters have lectures in literature, ethics, history and political economy. They conduct debates. They teach in the lower grade, which contains the most illiterate. They publish a paper which is edited and printed on the premises, and contains interesting notes of current events outside the prison and details of concerts and lectures at Elmira. The middle grade prisoners study languages, arithmetic, literature, etc., and the third grade, which contains the most illiterate, study under a special adaptation of kindergarten methods.

"One of the most interesting features of the Elmira system is the military organization. All the able-bodied prisoners are enrolled in the regiment, which contains 1,200 men, divided into sixteen battalions. A regimental dress parade occurs every day, with the usual accompaniments of musical bands, salute of the national colors and discharge of a field piece for evening gun. The military training helps to maintain discipline, and is very popular with the men. It has been found that discharged prisoners are very ready to enlist or join volunteer military organizations.

"Thirty-one trades are taught at Elmira, and each prisoner receives a thorough training in his chosen trade. They are paid in actual coin, and all work with the knowledge that the faster they progress industrially, intellectually and morally, the sooner will they be discharged. Thus, idleness is impossible; the deadly monopoly of our system does not exist."

Her opinion of Japanese methods is also high. She says:

"The reformatory system is adopted in the Japanese prisons with every success. After the first brief punishment is over association with the other prisoners is allowed, and they are taught trades and given lessons in all subjects necessary for mental and moral training." J. W. G.

Reformatory for Women Needed in Ohio.—The Columbus (O.) *News* declares that the legislative committee now investigating the women's reformatory project will fail of its duty if it does not recommend improvement in the method of treating female prisoners in that state. "At present these condi-

tions are such," it says, "as to breed crime and immorality, whereas they ought to be precisely the reverse. The change has been delayed too long. The state has a right to punish a woman, as it does a man, for violation of the law. But it has no right, in so doing, to make her a worse woman than she was before. It is the duty of the state to restrain delinquent girls, and to remove them from surroundings that mean their inevitable moral ruin. But it has no right, in so doing, to place them where their associations may be even more harmful than were those from which they were taken. Yet both of these things are being done in Ohio to-day. It doesn't make any difference whether it is called a reformatory or by what name it is known, there should be a separate place of confinement for women criminals. There should be complete provision for separation of first termers from hardened lawbreakers. In the case of girls, it is nothing short of sinful to mingle forcibly mere delinquent with brazen vice. It ought to be stopped at once." J. W. G.

Infliction of the Death Penalty by Electricity.—The JOURNAL has received a reprint of an article by Dr. E. A. Spitzka, of Philadelphia, entitled, "Observations Regarding the Infliction of the Death Penalty by Electricity." Dr. Spitzka states that his observations are based upon fifty-four cases of electrocution, and his conclusions are that it is the most humane, decent and scientific method of inflicting the death penalty ever devised because of its efficiency, quickness and painlessness, and ought to be adopted by every state in the Union. Dr. Spitzka adds that executions should take place in a building remote from the penitentiaries where other convicts, more or less susceptible to reformation, are confined. The erection of scaffolds in prison corridors or the knowledge on the part of other convicts that an electrocution is in progress has a bad, even brutalizing, effect upon them.

The suggestion that the death penalty be inflicted by means of the injection of prussic acid or the use of chloroform is open to the objection that the hypodermic syringe and the use of chloroform are associated with the practice of medicine, and their employment for the purpose of putting criminals to death would arouse the unanimous protest of the medical profession.

Dr. Spitzka takes occasion to record his unqualified opposition to the proposed abolition of capital punishment.

"The question, 'Is capital punishment justifiable?' has," he remarks, "agitated the minds of men ever since the dawn of civilization. Public opinion is never so fickle with regard to any problem of life as this one. My own opinion is a firm conviction in favor of it for those who commit premeditated murder, arson, train wrecking and bomb throwing. Society needs this penalty for its own protection and it is authorized to use it. The Mosaic law, 'Thou shalt not kill,' refers to murder and not to legal execution. The fear of death is in most men, and it is, therefore, the most powerful means of intimidation. Optimists may hope to see society organized upon such an enlightened plane that the penalty need not be resorted to—but that time is not yet at hand. In nearly every county or state which abolished the penalty, the subsequent increase in crime aroused a clamor for its reëstablishment.

"The opinion is held by some that the penalty fails to act as a deterrent for others. The argument is puerile, for this country at least, inasmuch as only 1.3 per cent. of homicides are convicted. In Germany 95 per cent. are convicted, or, proportionately, thirteen times as many. Were the penalty as rigorously en-

forced in the case of murder as the whipping-post is used in Delaware for various crimes, its deterrent effects would soon become manifest. It is idle to talk of anything but prompt punishment as a deterrent of crime.

"Thus, in New York City, in 1904, there were 147 first degree murders; but there were only 27 convictions and only two were executed. In the same year, in Philadelphia, 148 murder trials resulted in only 7 verdicts of murder in the first degree and several of these, on re-trial, received minor sentences. London, with 6,000,000 inhabitants, had 24 murders; 9 were hanged therefor. Chicago, with 2,000,000 inhabitants, had 128 murders; only 1 was hanged.

"Society has relaxed too much. The death penalty is a necessity and must not be abolished, else all discipline of society will be relinquished. Though society 'revolts at the old religious dogma of the retribution of hell, the church still retains it as essential in its terrible dissuading appeal to the imagination of men' (*New York Sun*). Let us, therefore, in our penology, adhere to what the test of time has proven to be an efficient check if only it be carried out as has been done in Germany and Great Britain."

Finally, he charges our inadequate legal machinery with responsibility for a large part of the crime now being committed.

"The tardy justice meted out to murderers," he declares, "is the most deplorable feature of our legal machinery to-day. There are too many loop-holes for escape—long delays, endless appeals, lots of slush about the 'unwritten law,' numerous legal technicalities and sentimental juries. By the pettifogging of criminal law the great majority of cases are granted new trials in the United States; in Great Britain only 3.5 per cent. Nearly always the appeal is based upon points of pleading and practice and many years elapse before the final settlement of the case. Our administration of justice has degenerated into a sort of 'rose-water penology.' Its demoralizing effect upon the community is manifested by the rapid increase of crimes of violence among juveniles, so ready to imitate and emulate their seniors in crime. We have become too much accustomed to failure of justice in murder cases. This blot upon our civilization is largely the outcome of our indifference to the way many criminal courts are conducted. Certain magistrates make a farce out of serious business, lawyers wrangle with each other unchecked, witnesses are brow-beaten and bribery and corruption of political complexion degrade the proceedings to the level of a saloon or gambling den or a policy shop rather than a court of law." J. W. G.

Radical Penal Reforms Proposed in England.—Mr. Winston S. Churchill, in a speech in the British House of Commons on July 20, announced important improvements he intends to bring about in British prisons, and urged the passage of legislation which, if enacted, will effect highly beneficial reforms in the administration of criminal justice in the British Isles. Mr. Churchill, as Home Secretary, has given considerable study to the treatment of criminals, and being convinced that the methods hitherto in vogue have signally failed, he now desires to put in operation a program with reclamation as its keynote. His proposals, some of which go into operation immediately, and others of which will be developed within the coming year, include the following:

The more extended use of probation.

The granting to defendants of a period of grace in which to pay their fines without being committed for default of payment at the time of trial.

The abolition of the system of ticket-of-leave, together with police supervision of convicts released from institutions.

The establishment of a central agency representing public authorities and prisoners' aid societies, which shall extend and regulate the supervision by prisoners' aid societies of prisoners released from institutions.

The establishment of a system of defaulters' drill (a system of disciplinary physical exercise) as a substitute for imprisonment in the case of lads from 16 to 21 years of age convicted of minor offenses.

The reduction of the maximum period of solitary confinement in prisons to one month.

More rational prison treatment for suffragettes and passive resisters.

The holding of quarterly concerts or lectures in jails.

Last year 90,000 persons, of whom over half were convicted of drunkenness, were committed to prison in default of payment of fines. Of these, 13,000 or 14,000 paid their fines in whole or in part after being imprisoned for a while. The governor of Wandsworth Prison has estimated that of 138 persons committed to that institution in a single week for non-payment of fines, at least 40 or 50 could have paid their fines in full if allowed the time and a chance to go to work. A bill will be introduced this autumn intended to do away with the present system of summary commitment of those who cannot pay their fines at the time of trial.

Mr. Churchill states that the Children's Act has worked admirably and has greatly reduced the number of juvenile commitments. He is desirous that every effort be used to save youths between 16 and 21 years of age from imprisonment. At least 5,000 youths are annually committed for rowdyism and similar petty offenses. Mr. Churchill advocates that as a substitute for commitment to jail, which can only be degrading, a system of defaulters' drill be instituted for this class of offenders. He advocates that this drill, which should not be of a military character, be developed as a disciplinary branch of the probation system.

In his speech before Parliament, in discussing the treatment of youths, Mr. Churchill laid down these principles:

"No youth should go to prison unless he has shown himself incorrigible or has committed a serious offense.

"No youth ought to receive any sentence which has not a definite curative and educative character. It should never be a purely punitive sentence.

"The sending of boys to prison for three, four or ten days for offenses which might perfectly well be settled outside the prison gates, has all the evils of sending them to prison for a long period."

Mr. Churchill gives statistics showing that of the 4,000 convicts released from jail during the four years from 1901 to 1904, about 3,000 have already been re-committed. A. W. T.

Prison Labor in Rhode Island.—The National Free Labor Association, of 832 Broadway, New York, has published a pamphlet criticising the Rhode Island method of disposing of its convict labor. The inmates of the state penitentiary and of the Providence county jail are employed in the manufacture of workingmen's shirts under a contract with the "Prison Labor Trust," which pays the state only thirty cents per dozen for shirts manufactured, while the cost of making the same shirts outside of prisons is not less than $1.20 a dozen, exclusive of rent, power, heat, light, etc. The very same corporation, we are told, pays the state of Wisconsin 85 cents a day for the labor of its convicts. Missouri receives 70

cents a day, West Virginia 65 cents, Tennessee $1.10, Nebraska 62½ cents and Maryland 55 cents. Had the contract price for Rhode Island convict labor been 70 cents a day, the state would have received about $550,000 more under the present contract.

The systems of prison labor in vogue in this country, says the association, may be grouped into two classes.

In some, notably the National Government and New York state, the prisoner works for the state. The product of the convict's labor in some of the states in which this system prevails is sold in the open market, just as any private manufacturer sells his goods. In others, goods made by prisoners are used by the different state institutions, such as the public asylums, schools, etc., or else the convicts work on the roads or other public works. The important point is that the convict works for the state.

The other system of prison labor, prevailing in 29 of the states, is that whereby the state hands the convict over to a private individual or corporation. He becomes an employe, not of the state, but of a private contractor or lessee, who pays the state for the prisoner's work, either so much a day or else a certain price depending upon the amount of work done.

Here the prisoner works for a private individual, not for the state.

"What we object to in prison labor," continues the report, "is the state letting it out to private contractors—that is, selling the prisoners to contractors at so much per head per day, or at so much per dozen turned out—and then the product of this convict labor being sold in the open market, not only in competition with free labor, but also with the business men who employ free labor and who cannot hope to get a fair market price for their merchandise when they have to meet the prison contractor's price based upon the ridiculously low prices per day or per dozen paid for convict labor under the prison contracts. The objection to the contract convict system is in the interest of the state, of labor, of the fair business man, of the convicts themselves, and of common humanity. Misery, brutality, demoralization, cupidity and graft characterize the contract system."

The model prisons of this country, it declares, are the Federal Penitentiaries at Leavenworth and Atlanta, where the law of the United States prohibits the contract system. Fourteen of the states also prohibit the contract system. What is the matter with Rhode Island? Even in those states that allow the contract system it is generally surrounded by the following safeguards against graft and at least some restrictions placed upon competition with outside industry:

1. Contracts are let only after proposals have been advertised for a specified time in prominent newspapers by the Prison Board.

2. The bids are published, and the contract does not go into effect until a public hearing has been had or else has received the approval of the Legislature.

3. The number employed in any one industry is limited.

4. The contract is registered as a public document, and is open to public inspection.

5. Only such industries are allowed as will tend to make the convict self-supporting when released.

6. No contract is made for a longer term than three years.

7. The successful bidder must not be interested, either directly or indirectly, in any other prison contract.

8. Acceptance of any gratuity or emolument from a contractor by an officer of the institution or a member of the board in charge is punishable by fine and imprisonment.

9. All convict-made goods are marked and branded. J. W. G.

Suggestions for the Improvement of the Jury System.—The above is the title of an article in *Bench and Bar,* for July, by Henry M. Earle, of the New York bar. Mr. Earle is of the opinion that an examination of the methods by which juries reach agreements will reveal an astonishing surprise to any judge or lawyer. He cites some incidents in illustration of the difficulties which it is claimed exist in our jury system because of a lack of knowledge on the part of jurors as to their duties and their relation to the several functions of our judicial procedure. Some of these are the following:

A juror recently admitted that he intentionally forced a disagreement, because one of the counsel had previously challenged him in another case. A foreman of a jury admitted that by a threat to "hold out" he effected a disagreement, because the defendant was a corporation, and he was an officer in several similar corporations and believed that the other eleven might give too large a verdict—this from a man of education, wealth and position. A jury which had received a carefully prepared charge on the law of contributory negligence admitted that their verdict was contrary thereto, but that all decided that the defendant railroad company should pay plaintiff $1,000, with which he could open a small shop, as he could no longer work. Justice Guy, of the New York Supreme Court, First District, discharged a jury with a severe reprimand and fined them, because it was discovered that they had reached a decision through the simple expedient of spinning a coin. It appears that no secret was made of this fact. Their act was attributable directly to ignorance of their duties. Subsequently one of the jurors, who felt his disgrace with unusual severity, became so despondent that he was made ill; and eventually he died from causes attributed by his physician directly to worry over this incident.

Mr. Earle thinks that the service rendered by juries might be substantially improved by giving them more definite instructions concerning their functions and duties, the same to be furnished in the form of a printed notice by the county clerk or commissioner of jurors. As a preliminary basis for such instructions he suggests the following:

NOTICE TO JURORS.

The following instructions are issued upon the order of the Appellate Division. All jurors are required to read them carefully and to be guided accordingly. Any infraction of these instructions may result *in punishment for contempt.*

The jury is a part only of the judiciary administration and cannot in any event act independently of the court's instructions.

The function of the jury is to decide such questions of fact as may be submitted to it. Only the evidence actually presented in the case can be considered and no other fact or circumstance must influence the jury.

The law governing a case is decided entirely by the court, and the jury will be instructed at the end of each case what the law in such case is. All questions of fact are left entirely to the jury, and their verdict must depend solely upon the facts presented, as considered in the light of the court's instructions on the law governing such facts.

It is not the right of the jury to attempt to administer justice as they may see and understand it. The jury must, however, aid in this object by considering attentively, fairly and intelligently *the evidence* and the *court's instructions,* basing their verdict on the same, and nothing else.

Any juror has a right at any time to ask any questions in relation to the case that he may deem important, but the court will pass upon the propriety of any such question and the answer thereto.

No juror shall, while a case is pending, in any way communicate with anyone in relation thereto, except in the jury room.

Discussions and arguments of counsel in relation to matters of law are not to be considered by the jury, neither are they to consider any evidence that may be improperly given and ordered stricken out.

Any knowledge or information that any juror may have in relation to anyone connected with the case must not be considered, unless same is made a matter of evidence and a part of the record. Excusing a juror from service by counsel is entirely proper and does not indicate any personal objection.

The jury may send to the judge for further instructions or directions or for papers or exhibits. Any explanation desired in relation to these instructions will be furnished by the trial justice, and any infraction thereof by any juror may result in his summary punishment.

Failure of any juror to act under the foregoing rules may defeat the object of the trial, and necessitate a retrial of the case.

ADDITIONAL NOTICE TO FOREMEN OF JURIES.

Foremen of juries are required, in addition to the duties of regular jurors, to see that all proceedings of the jury are conducted in a proper and orderly manner, and must report to the trial justice any improper act or statement of any juror or any infraction of the foregoing instructions.

In all cases the foreman must report the verdict; and where sealed verdicts are ordered, he must see that the form of the report is properly made out.

J. W. G.

What to Do With Criminals.—The criminal problem of the state of New York, writes Dr. Walter N. Thayer, in the *Survey,* for July 9, has in the last few years assumed startling proportions. "Our three great prisons," he says, "are crowded as never before, and the number continues to grow out of all proportion to increase in population. The average population of the state prisons from 1889 to 1906, both inclusive, was 3,470 men. In 1907 it was only 3,456. In 1908 it had grown to 3,817, an increase of nearly 400. Last year, 1909, the average swelled to 4,420, an increase of 600 over 1908 and of nearly 1,000 over 1907; 1910 shows a still greater increase. A relatively large number of these men are serving a second or subsequent sentence."

"The latest specific for the cure of crime and the eradication of the criminal, namely, sterilization, rests," he declares, "on the assumption that heredity is the main factor in perpetuating criminals and that environment plays but little, if any, part. But an analysis of the reformatory methods in our prisons shows them to be an attempt on the part of the law to change the whole trend of the criminal's life by a temporary environment supplied by the state. If environment is not an important factor in the formation of the criminal, and if heredity is the

major cause of his moral obliquity, surely prison or reformatory discipline for a certain definite period can do little to make him a better citizen.

"If we are to adopt, as the sterilization idea would seem to recommend, a short cut to the paths of virtue; and if, as Marro would have us believe, 41 per cent of our criminals are what they are because of drunkenness on the part of one or both parents, would it not be well to go one step farther and practice vasectomy on all drunkards?

"No one questions the inadvisability of permitting the insane to procreate, but who is to judge a man's fitness from this standpoint? The daily papers give us cases without number of individuals whom one group of alienists declare on their oath to be insane, and whom other alienists equally noted, equally proficient, swear to be not only sane but desirable citizens. Who then is to decide?

"What protection does the present generation expect to receive against crime committed by these sterilized criminals? The warmest advocates of the emasculation idea will not claim that the sterile man has any fewer tendencies toward the commission of crime than the potent one. According to Dr. Sharp of Indiana Reformatory, "sterilization does not even reduce nor in any way affect the sexual appetite." It merely prevents impregnation. Of what use then is it, even in the case of the rapist? The horror one feels at rape is due not to fear of impregnation but to the act itself.

"Granting that the first aim of criminal law is the protection of the public, and granting that sterilization does not prevent the individual operated upon from committing crime, what would the advocate of sterilization do with this individual? It comes right back to the starting point: you must imprison the criminal to protect the public, and as long as he is in prison he cannot procreate. But if you discharge him before he makes up his mind to be a law-abiding citizen, be he potent or impotent, he will return to crime and to prison, and the problem is still with us.

"It seems to me the only hope we have of a satisfactory solution of the criminal question must come from a readjustment of the laws for the punishment for crime. A weak point in the present method of law enforcement, or in the manner of handling the criminal, is the fact that almost without exception the "old timer" or habitual criminal receives a shorter sentence than the first offender. It is the usual thing to find that the first offenders receive sentences varying from half again to several times in duration that of the old offender. Now, if we concede that the average first offender gets no more than he deserves, it follows *per se* that the habitual criminal gets less than he deserves. There are two reasons for this: First, absence of identification of the individual as an old offender; second, his willingness to plead guilty to a minor degree of crime, thus saving labor and expense for the district attorney's office. In the first offender, however, prison inspires a feeling of terror; he fights his case and is unwilling to plead guilty to any degree of crime, hoping to the last to be acquitted. As a result he is prosecuted, causes trouble and expense, and if convicted receives a severe sentence.

"Our criminal law has not kept pace with our prison methods. No one can tell when such a man will be fit to mingle with society, and only long observation can even approximate the time. Even then many mistakes will be made and many individuals will return to a life of crime.

"The remedy for this condition, it would appear, lies first in endeavoring to

change the early environment of the children most prone to develop into the adult criminal; in supervision and control of the homes of incarcerated criminals; and if necessary, the commission of their children to special institutions for moral education and to alleviate the distress occasioned by the incarceration of the father. Second, so to reconstruct our penal laws as to place them abreast of the latest development in penological thought." J. W. G.

Why Juries Refuse to Convict.—Judge McKenzie Cleland, of the Chicago Municipal Court, gives the following reasons why juries refuse to convict in criminal cases:

"We have too much crime in this country. The daily press contains much criminal news, although little is printed unless it is of a sensational nature. Most crimes are now so common as to be deemed unworthy of notice by the papers. Statistics show that crime is increasing much faster than our population, and this would indicate that there is something radically wrong with our method of treating the criminal. This is usually assumed to be in our failure to punish him speedily and severely. It is true that it is difficult nowadays to convict persons charged with crime. About three out of four persons held to the criminal court by the Municipal Court judges in Chicago are freed by the juries before which they are tried. It is apparent that the reason for this is the sympathy of jurors—not with crime, as is sometimes charged—but with men convicted of crime and with their families.

"The consequences of imprisonment are so disastrous that juries hesitate long before visiting them upon their fellowmen, and the more highly organized society becomes the more disastrous and far-reaching become the effects of a prison term. An ex-convict can no longer remove to another country or state and begin life over again. Modern inventions, like the railroad and the camera and the newspaper, have made this impossible, and as a result these men are forced into the ranks of the professional criminal, of whom it is estimated we have more than 100,000 in this country.

"There would seem to be something radically wrong with the system of government which compels a man to commit crime for a living or which permits such a thing as a professional criminal to be at liberty, and yet this is the undoubted result of our present system of punishing offenders. Even granting that men are reformed by punishment, which few believe, nevertheless what benefit is it to society if he is thereby made an outcast and compelled to again violate the law? It follows therefore that the prison should not be the first but the last resort in the treatment of the criminal, and the reason for an offender's imprisonment should be—not punishment, but protection to society from his acts. This would result not in shortening prison terms, but in lengthening them. We all know that most men who violate the law do so as a result of their environment and not from any desire to commit crime. In the great majority of such cases the wrongdoer can be reformed by removing the cause. I can conceive of no greater wrong to society than to imprison unfortunates just long enough to ruin them and then turn them out to commit crime. This process is now being applied to about five hundred thousand men every year in our country, and yet we wonder why crime is increasing!

"If the power and intelligence of the courts were applied to ascertain, in each individual case, the cause of the wrongdoer's act, and then remove such cause—which is entirely possible in a very large majority of the cases—these men could

be saved to their families and to society. If this were to be the results of the trial, juries would convict where they now acquit, and, in fact, many offenders would save the state the cost of such trials by pleading guilty in order to get the help which they need, and most of them want, to enable them to become law-abiding citizens. This is probation; an opportunity to reform without imprisonment, thus saving intact the offender's capital, preserving his reputation and self respect, and teaching him that the law is not his enemy to revenge itself upon him, but is his friend to help him to become a good citizen and a useful member of society. It is to secure the passage of laws requiring this that the National Probation League is formed.

"Twenty states have already passed adult probation laws and thirty states have passed juvenile probation laws and when the others follow and the courts are educated to appreciate the importance of this principle in the treatment of delinquents we will experience a marked diminution of crime. There is less crime in Germany than here. This is also true of Great Britain and other European countries, but this is due not so much to their laws (although Parliament has lately adopted a Probation Act) as to their ability to send their habitual criminals to America. A committee of Congress some years ago found this was being systematically done by many European Governments and while our Government endeavors to prevent this, it has not yet been successful." J. W. G.

Identification of Criminals by Means of Finger Prints.—The Boston police authorities, says the *Transcript,* have recently established the most efficient and up-to-date finger print system in the country. Every country in Europe, it adds, is now using the finger print system in connection with the Bertillon method of measurement. There are now at police headquarters over 4,000 cards in the filing cabinet containing prints from Italy, France and England, besides many from all parts of the United States. Describing the system, the *Transcript* says:

"One of the greatest advantages of the finger print system is in tracing criminals. Practically every thief, burglar, murderer and bank robber leaves behind him somewhere an impression of at least one or two of his fingers. The imprint may be found on the window pane, on a bit of plated silver, a drinking glass, a piece of furniture, a cash box or a candlestick. Some are so plain that the designs can be made out with the naked eye. Others are latent prints and can be photographed after they are sprinkled with a white, red or black special powder. The impressions are then taken to where the files are kept, and, as criminals are a class, the card of the guilty man, telling who he is and what his record has been, can be found. Thus the thief or murderer is known before he is caught.

"If, however, there is no previous record against the man, nevertheless the finger prints he left behind him are of great value. As soon as a man is arrested on the suspicion that he is the man wanted, he can be identified as the criminal or not. Time and time again the detectives in New Scotland Yard and in India have found latent prints and caught the guilty parties within twenty-four hours of the crime. It is done more in England and her colonies than in the United States, because the system has been established there longer. It is only in its infancy here. Up to the present time the Boston police have only used the Bertillon system as a means of identification, but now that the finger prints are all filed both systems will be employed.

IDENTIFICATION BY FINGER PRINTS.

"Ever since Alphonse Bertillon devised his system of measurements the police in the United States have placed great faith in its effectiveness. It is an excellent system in many ways, but now the police are beginning to realize that the finger print system has several advantages. One of the greatest of these is the fact that criminals often leave impressions of their fingers behind them, but they never leave the dimension of their head or arms, at least not in centimeters and millimeters. As is well known, M. Bertillon's scheme is to measure the bony parts of the body, the head, foot, fingers, outstretched arms, cheek and height. Great care is required in making these measurements or they are worthless. The instruments are sometimes pressed down too hard and the figures sometimes are incorrectly recorded. Each measurement has to be taken at least twice before it is safe to record it. This work requires conscientious and skilled workmen. In France if an officer makes a mistake he is fined ten francs. In comparison with the finger print system it is much more complicated and less exact.

"Almost any man can take impressions of the fingers. As the digits record themselves there are no inaccuracies. The Bertillon instruments are costly and can easily get out of order. All that is needed for finger prints is a pad of paper and some ink. If a mistake is made in taking the Bertillon measurements it cannot be corrected and also it cannot be discovered until the whole work of measuring is done over again. Furthermore, the mistake is not evident. No 'key' is required in classifying the finger prints, as is necessary for the Bertillon cards. With the finger tips the patterns are of two classes, each recognizable at a glance. This makes the primary classification easy and simple. The above comparison of the two methods is taken largely from the report of the special committee appointed by Mr. Asquith when home secretary in the British Cabinet in 1894. As a result of this report the Indian government entirely gave up the Bertillon system six years later when the infant finger print method had proved its claims.

"To realize the value placed on finger prints," the *Transcript* concludes, "one should visit India. As false personation is very prevalent in the courts there, finger prints are often resorted to to prove the identity of a witness or defendant. In all the registration offices persons, who, admitting execution, present documents for registration are required to authenticate their signatures or mark by affixing an impression of their left thumb both on the document and in the register for the purpose. If a man says that a deed which purports to be a transfer by him of certain rights is not genuine he is required to give an impression of his thumb in open court; and this is compared with the impression on the document and in the register, and can be proved to be either the same or a different impression, and this proves the point. Thus the labor of the courts is greatly reduced. Friends and relatives of pensioners in India used to collect allowances for many years after the pensioner himself had died. The fraud became so common that now all civil and military pensioners are required to give their finger prints. Prints are also used to prevent the spreading of plague and for regulating the pilgrimage of the Mussulmans to Mecca, thumb impressions of the persons to whom permission to make the journey of religion has been granted being required. They are used to prevent false personation at the examination for positions in the civil service and to prevent laborers who are criminals and trouble-makers from getting work with public contractors. The finger print idea has reached the Bank of England.

It is used there for purposes of identification where large sums of money are involved. After the first of August all the employes of the city of Milwaukee will have to give impressions of their left thumbs before they receive their pay. These prints will be compared with a register kept for the purpose. If the impression is not a duplicate of the one in the register the man cannot receive his wages. This plan has been adopted to prevent persons claiming to work for the city from receiving money to which they are not entitled and is being considered in other cities. In view of the ever-increasing number of foreigners who come to this country and later prove to be highly undesirable it perhaps would not be unwise to take impressions of their thumbs upon arrival."

J. W. G.

Mistaken Lenity to Criminals.—Mr. Frederick H. Mills, general agent of the state prisons of New York, in an article published in *Harper's Weekly* for July 30 describes the remarkable changes that have been made in recent years in the treatment of prisoners—an evolution which, by substituting kindness and comfort in the place of neglect and severity, is in many instances tending to endanger the public security. Mr. Mills advises the potential law-breaker to commit his crime now and take his punishment before the inevitable reaction against our present lenient methods comes. The system of trade instruction at Elmira and the scheme of scholastic and physical instruction carried on in that institution, he says, give the young man committed there for his first criminal offense an opportunity of education and training quite equal to the best technical and military schools in the world.

"The population of a prison," he remarks, "is largely made up of men and women whose first breath was tainted with the germ of disease. Their whole lives previous to the time they reach the prison have been spent amid surroundings of vitiated air, putridity and decay. The regular life and plain diet of the prison changes the whole order of development of these subjects. In many instances the dread germ of tuberculosis develops as soon as they arrive. It is a settled policy of the New York prison department to transfer all such cases to the new hospital at Clinton prison in the Adirondack Mountains. The patients are there domiciled in hospital wards instead of stuffy cells, and given the benefit of the most advanced system of treatment in a climate favorable to recovery, under the direction of an expert in tubercular treatment."

"The dominant idea of the officers in charge of the prisons of the state had been to produce a financial result from prison labor, but the adoption of a new constitution in 1894 brought about a change in the system. Since then convicts may only be employed in the manufacture of articles for the use of state institutions. The present superintendent of state prisons came into office at that time, and he has developed a marvelous instinct for the education and training of adult criminals. The entire prison population is divided into groups, and grades are based on the convict's conduct in prison and his previous criminal history. The first or "A" grade comprises those serving their first prison term, and these are retained at Sing Sing; the "B" grade is made up of those who have served a previous term, who are incarcerated at Auburn; the "C" and "D" grades are constituted of those who have shown by repeated convictions that they are likely to remain criminals for all time, and their habitat is the prison at Clinton.

"A system of scholastic instruction has been established in the prisons under

the direction of the State Commission of Education, and the convicts are required to attend school a portion of every day in the year, with the exception of Sunday. The eagerness with which the prisoners embrace this opportunity for instruction in the rudiments of education has been remarkable, and the fact that there are no illiterate men in the prisons of the state to-day is a most eloquent testimonial to the potency of this means of reformation. The scheme of instruction comprises the essential features of the common school course, with such changes as are necessary to adjust it to the requirements of the class of pupils it seeks to benefit. The workshops in the prisons are organized and carried on substatially in the same manner as are the great workshops for free workmen. The catalogue of manufactures comprises more than seven hundred articles. There are in the New York state prisons twenty-six separate industrial organizations; seventy-five different trades are carried on, and the convicts assigned to and working at these trades are placed in the same relation to labor and the method of earning a living by their own efforts as they must meet on their release.

"The elimination of every extraneous influence from the administration of prisons and the introduction of scholastic and industrial training have produced an almost complete change in the interior routine. A well-fitting gray uniform has been substituted for the former stripes; the military for the lock step; shears in place of the old clippers for the convict's hair, that made him look like an ape, whereas he may now feel no loss of self-respect on that account. Crockery has replaced the old tin cups and pans in the prisons of the state; prison underwear is numbered so that each man has his own; an oculist and a dentist, respectively, look after the eyes and teeth of the inmates. An electric light in each cell has replaced the old tallow candle; the paddle, the rack, the ducking-stool, the handcuffs and all unusual and degrading means of punishment have been abolished. Infraction of rules to-day merely consigns the convict to solitary confinement until he reaches a normal condition of mind and signifies his willingness to conform to discipline.

"Similarly, the nature of the prison term has been changed, until at this time the indeterminate sentence in some form prevails throughout the state. The population of the prisons and reformatories for adults has not increased in anything like the ratio of the increase of population in the state. The reason for this has been given by many experts, and it varies with the mental attitude of the person giving his opinion. There are those who believe that we have reached a correct solution of the whole question of crime, and that the children's courts, the law that permits a judge to put men on probation and not to commit them to prison until it has been demonstrated that they cannot otherwise be reformed; and the law that gives every offender in prison for the first time an opportunity to go out on parole after he has served a minimum time prescribed by the court, with the rational and humane treatment of the convict in prison, has brought about such a change in the characters of the criminals themselves that they are gradually becoming normal and crime is lessening.

"On the other hand, we are daily presented with evidence of crimes that shake the very foundations of society. A glance at the daily papers any morning must convince the most casual observer that crime is not decreasing. In an uptown apartment house recently there were five robberies in a single night. There were more than thirty apartments in the building. Is it not remarkable that

the five apartments selected by the thieves were those where the families were away for the evening? How could this fact have become known unless someone familiar with the movements of the occupants of that house gave the information to the thieves? How many people who read this article live in apartments, and of these how many know who guards the house at night? The elevator boy or man changes frequently, and I have very often seen men in apartment house uniform who have worn a more striking uniform in days gone by. The crime of aiding robberies is seldom punished, and the men who commit it feel that it is more or less legitimate.

"Under the parole system of the state there are approximately nine hundred convicts set free yearly under suspended sentence, and *five* probation officers are supposed to keep track of them! Any sort of surveillance is manifestly impossible under these conditions, and, knowing this, the criminal naturally returns to crime. Scores of instances have come to my attention, and I will relate but one of them. A man who had served a prison sentence for swindling a scrubwoman, a widow, out of her life savings, was again convicted of swindling. Sentence was suspended in his case on condition that he pay back the money he had stolen from the woman, at the rate of five dollars per week; but, although he had money enough to deposit $7,500 cash bail while he was awaiting trial, it is only by strenuous efforts that he is forced to pay the weekly dole to the widow.

"In the criminal courts unwarranted leniency is shown to old offenders who are young in years. Four very recent cases within one week have come to my knowledge. One was that of a boy claiming to be seventeen years of age, but really much older, who had served terms in the Catholic Protectory and the House of Refuge, and was convicted for the third time of burglary. Another was that of a man of twenty-five years, who had been convicted of grand larceny for the second time, and had served three terms in the House of Refuge and one in the City Reformatory. The third case was that of a youth who had been convicted of grand larceny twice and paroled each time, and had been found guilty of the same crime. The other case was that of a boy almost twenty-one, who had violated his parole while under sentence for burglary. The superintendent of the House of Refuge appeared in two of these instances to notify the court that the liberation of the young men was not only a menace to their own moral development, but also to public safety. Nevertheless, in all four instances sentence was again suspended." J. W. G.

Immunity of Petty Criminals from Punishment.—The Boston *Transcript,* in an editorial, complains of the practical immunity of immigrant criminals in America from punishment. Unless their crimes are so serious in character as to attract the attention of the community and thus compel the district attorney by the pressure of public opinion to prosecute the case to a finish they are never likely to see the inside of a jail.

As an illustration of how our criminal laws are working, says the *Transcript,* a serious strike occurred not many miles from Boston in the early winter of 1909, in which Poles and Armenians went out of the factories and Greeks tried to take their places. Assaults were for several weeks almost continuous. Men caught by the police were brought into the local court, where the judge began to impose fines. Seeing that these had little effect, he gradually worked up to jail sentences of six months. Some of the assaults proved of a very serious character. But from all these jail sentences appeals were taken as

fast as they were imposed, and, released on bail, the alleged assailants went forth the next day to renew their violence. The cases went to the Superior Court at its next term, but it was so crowded that they were not reached. When they finally came up for trial the counsel for the defendants told the district attorney that he should insist upon trying at length every single one of them unless the latter would agree to a settlement through the payment of modest fines. On these cases, involving as they did the hearing of witnesses through interpreters, much time could be consumed. The list was so long that the district attorney felt compelled to accept the compromise offered by the defense. The Armenians, Poles and Greeks, therefore, learned that they might club a man on the head in America without any resulting penalty worse than having to pay a very modest sum of money, and that after a considerable lapse of time.

"Murders and other great cases in which public interest is aroused, the district attorney must, regardless of time or court facilities, push to trial. But to make way for them he is apparently obliged to throw overboard, in order to lighten the ship, a very large proportion of the petty cases, or at least agree to settlements of them which represent no proper assertion of the authority of the law. People may accordingly wonder when they read that a policeman, in trying to arrest a man, has been assaulted by the offender's associates, whether the latter will ever be punished, no matter how prompt the sentence in the lower court may be. If the charge of intent to kill can be brought against the offenders the cases will go to the Superior Court, and they would be likely to undergo sentences, perhaps for a long term of years. But if their action constitutes merely an assault, even though very serious in character, but involving no felony like an intent to rob or to kill, it would go to the lower courts. Persons there found guilty usually escape without any punishment worthy of the name, even though their offense may have been committed with stilettos, with revolvers, or with clubs. By the time their cases are reached, after all possible delays within the power of the attorney for the defense have been utilized, he is usually able to force a compromise with the district attorney.

"Cases of all sorts are settled in Massachusetts, because the district attorney has so little time. The counsel for the defense simply threatens to congest the court unless this is done. The whole situation is not only humiliating, but it is becoming dangerous. A former district attorney of one of the Massachusetts counties remarked a few years ago that the criminal classes had no full realization of the extent to which they were immune from punishment. If they once understood the strength of their position they would break out in greater violence than had ever before been known. May it not be possible that the present outbreaks represent the gradual perception by the East European immigrants of what the conditions are? If so, is it not time that Massachusetts changed them?" J. W. G.

Illinois State Bar Association on Legal Reform.—The principal topic of discussion at the annual meeting of the Illinois State Bar Association, held in Chicago June 23 and 24, related to reform of legal procedure. Our present antiquated and ineffective methods and the crying need for reform were well stated by the president of the association, Mr. Edgar A. Bancroft of Chicago, a part of whose address is published elsewhere in this number of the JOURNAL. The committee on law reform presented a report covering the general principles

which should control in the introduction of any scheme of procedural reform. The report declared that:

"A practice act should deal only with the general features of procedure and prescribe the general lines to be followed, leaving details to be fixed by rules of court, which the courts may change from time to time as actual experience of their application and operation dictates."

It further laid down the proposition that:

"In framing a practice act or rules thereunder, careful distinction should be made between rules of procedure intended solely to provide for the orderly dispatch of business, saving of time and maintenance of the dignity of tribunals, on the one hand, and rules of procedure intended to secure to all parties a fair opportunity to meet the case against them and a full opportunity to present their own case, on the other hand; rulings on the former should be reviewable only for abuse of discretion, and nothing should depend on or be obtainable through the latter except the securing of such opportunity."

It is expected that sub-committees will be formed to study this question further and make recommendations in regard to various aspects of the subject; that a drafting committee shall be appointed to which the sub-committees shall report the result of their work; that the drafting committee will submit to the delegates to be chosen to a state conference, the result of its work, who, in its turn, are expected to call meetings of their constituent bodies to the end that there may be the fullest possible discussion and that as rapidly as it can be done with due regard to the importance of the subject and the necessity of full and free discussion, a concrete measure shall be worked out for submission to the legislature.

An elaborate address entitled "A Practical Program of Procedural Reform" was delivered by Mr. Roscoe Pound of Harvard University, which became the basis for a discussion which was participated in by various members of the local bar, the justices of the Supreme Court of Illinois, and members of the Supreme Courts of Wisconsin, Michigan and Indiana. Prof. Pound premised his remarks by the statement that one needs but to look about him to see that procedural reform is in the air and that the subject has progressed beyond the stage of discussion by jurists and teachers and entered upon the practical stage. "To say nothing of the elaborate measure pending in this state," said Mr. Pound, "bills for reform of federal procedure, including one for a commission to draft a complete federal practice act, are before Congress, and procedural reform has received the weighty approval of the President; a commissoin on delay in the administration of justice has reported recently in Massachusetts; a committee of the Association of the Bar of the City of New York has put forth a printed report on simplification of procedure; Kansas has adopted, at the instance of the State Bar Association, a revised code of procedure which embodies many notable reforms; the Bar Association of San Francisco recently has procured important reforms in the criminal procedure of California; and the American Bar Association now maintains what is practically a standing committee on delay and expense in legal procedure. Even more significant, there are notable signs of increasing liberality in judcial decisions on questions of practice. Thus, after a period of rigidity in practice, in which substance has been sacrificed to form and end has been subordinated to means, we are evidently about to enter upon a period of liberality in which the substance shall

prevail and the machinery of justice shall be restrained by and made strictly to serve the end for which it exists."

Mr. Pound warned the association against falling into the error of expecting too much from procedural reform at present. "In the first place," he said, "it is not a panacea. There are at least three problems connected with the administration of justice in America which are of equal, if not, some of them, of greater importance. Moreover, these problems are connected intimately with that of procedural reform. The organization of courts, and thereby the organization of judicial business, the personnel, mode of choice and tenure of judges, and the organization, mode of training and traditions of the bar have each at least as much to do with the conditions of effective judicial administration as the course and rules of practice in the courts. It is not too much, indeed, to say that improvement in these three particulars is a necessary precursor of thorough-going reform of procedure. With a modern organization of the courts and an efficient, independent, experienced judiciary, almost any system of procedure may be made very tolerable. Without them, the best considered practice acts will prove disappointing in their actual administration. In the second place, experience has shown that reforms of procedure must not come too soon and must not go too fast for bench and bar, who are to administer them. Much of the difficulty which has attended the operation of the New York Code of Civil Procedure and the codes founded thereon has arisen from the circumstance that the reform was premature. The bench and the bar were not ready for it. For one thing, the old procedure was not yet so thoroughly tested under American conditions as to afford a sound basis for reform. *Thirdly,* no amount of procedural reform can obviate entirely dissatisfaction with the legal administration of justice. Administration of law without forms is as impracticable and undesirable as administration of justice without law. But forms and rules will always operate more or less mechanically, and in consequence will always give rise to dissatisfaction with the justice administered thereby. Because of this inherent difficulty in all judicial administration, we must look for the chief benefits of procedural reform, not so much toward obviating popular discontent with the workings of the courts, although such discontent may be diminished to no small extent, as toward relieving our overworked courts of about 25 per cent of the points now submitted to them—points which have no real connection with the substantive rights of the parties litigant—and toward enabling lawyers to study and present their cases on the substantive law more thoroughly and intelligently, so as to assist the courts more effectively, and thus assure greater certainty and precision of application of the rules on which rights depend."

"There are three agencies," he said, "through which reform of procedure may be brought about conceivably. These are (1) judicial decision, (2) rules of court, and (3) legislation. Perhaps at the present time the scope of the first agency is so restricted by legislation as to make it impracticable for the attainment of any large results. Where there are not codes, going into minute detail, there are usually practice acts expressly providing, or at least clearly assuming, things of which any effective reform must rid us. With respect to these matters, it is obvious that judicial decision is powerless."

"Reform through the power of the courts to make rules is free," says Mr. Pound, "from the difficulties of the first mentioned agency, but in most jurisdictions and for most purposes, the detailed provisions of practice acts or codes stand

in the way of effective improvement through this method. It follows, therefore, that effective reform must come through legislation. This may take either of three forms: (1) A succession of brief practice acts dealing with portions of the subject or with special details, (2) a complete general practice act, after the general model of the codes of procedure, covering, or attempting to cover all details at one stroke, (3) a short, simple practice act laying out the broad lines only, and, so far as possible, dealing only with those matters that require legislative change or legislative authority for change, leaving the details to be settled, developed and improved by general rules to be devised or adopted by the judges. The first of these methods is open to serious objections. In the first place, it makes progress one-sided. Advance takes place here and there, as it were by jerks, but the general system is left as it was. And it happens not infrequently that defects are really in the system as a whole more than in the details. In that event, the detailed improvements have to take their place in the system and are molded thereto by construction until they fail of effect. A more serious objection is that such a succession of acts, when the work is complete, will give us a mass of enactment with all the characteristics of a code. In other words, it will give us a complete scheme in all its details, laid down in advance by legislation, and to be altered only by more legislation. The choice, therefore, must be between the second and third of the three methods mentioned."

The discussion of Prof. Pound's paper showed that the sentiment of the association was decidedly in favor of reform, though there were a few who did not hesitate to declare that existing methods were as nearly perfect as human wisdom could make them. One of these was Chief Justice Vickers of the Illinois Supreme Court, who asserted that he was not a reformer and that in his judgment the "hue and cry in the law journals and among the members of the bar was a myth." It is refreshing to note, however, that this view was concurred in by only a very small portion of those present. One incident which indicated the sentiment of the association as a whole was the sending of a telegram to President Taft assuring him that the bar of Illinois was in sympathy with his efforts in behalf of legal reform. J. W. G.

Edgar A. Bancroft on the Need of Reform in Court Procedure.—At the recent meeting of the Illinois State Bar Association Mr. Edgar A. Bancroft, the president of the Association, made the following remarks on the need of procedural reform:

"When lawyers meet for public discussion it is quite usual for them to consider matters outside their professional work. Very many of the organizations for civic betterment, nearly all philanthropic work which seeks improved legislation, are guided and supported by lawyers and judges. We are wont to claim, and I think rightly, that we are public-spirited, and that our associated efforts are usually directed toward ends beneficial to others, and which increase neither the number of our clients nor the fees they pay. It is well that this is so. Society values every profession and occupation, very much as it does the individual, by its contribution to the general welfare.

"At the present time there is a duty we owe the public, which runs with our own professional interests. It is resolutely and thoroughly to take up the present methods and machinery of the administration of justice for the purpose of radically simplifying that procedure and adapting it to the spirit and the needs of to-day.

"The officers of the court are the mere agencies—the methods and rules of procedure are the mere tools and appliances—for accomplishing justice, for ending strife fairly, promptly and completely. Neither agent nor implement has a reason or excuse for being, except as they together directly aid the work of the courts. They ought not to continue when they cease to aid, or when better methods and tools are needed.

"In all the activities of to-day we find marvelous improvements in methods. Modern machines and devices contain, and express in their actions, keen brain work as well as deft manual skill. They have revolutionized the industries of the world. The marvelous systematizing of co-operative work has likewise increased many-fold the efficiency of the forces in trade and commerce. The massing of resources, the joining of gigantic enterprises under one management, would be utterly bewildering, wasteful and self-destructive but for the intelligence which precedes and animates it and guides it by methods which prevent confusion and transform a vast complexity into a clear and orderly simplicity.

"In the medical profession the advance of the last generation has surpassed all that was done in the centuries before. It is due, as all progress is due, to the intellectualizing of a vocation, to harnessing the imagination to the plow; it is due to the application of the inventive method to medical problems. Empirical as it must be, its discoveries have evolved, as Darwin's theory evolved, from a closer ascertainment of facts and a more intellectual and imaginative study of their relations. They have come, as all the marvelous discoveries of our epoch have, by centering the whole thought and purpose of the investigator steadily upon the selected field, to seek out further facts and their hidden causes; as the moving telescope with its sensitive photographic plate gazes steadfastly upon one point in the dark vault of night until there finally comes out on the retina of its unclosing eye a clear image of the imperceptible star.

"The lawyer, in theory, is a part of the public institution for the cure of strifes between citizens. The courts are not a sort of amphitheater in which all contests shall be waged so as to preserve order elsewhere in the community. Their function is to put an end to strife that will not otherwise adjust itself.

"It would be criminal malpractice to apply to a serious illness to-day the treatment of fifty years ago, or to operate with the surgical instruments and appliances of that time. The methods, philosophy, *esprit de corps* of the medical profession have all been revolutionized, with incalculable benefit to its members—in prestige, rewards and influence—and still more, to society, as well as to the injured, the suffering and the mentally disordered.

"In the profession of the law, in the strife-hospitals of the courts alone, are the antiquated methods, appliances and standards still prevailing—substantially untouched by the spirit of modern life. We still have two trials in ejectment cases; we still maintain the distinction between law and chancery, with the judge exercising the powers of the court in chancery, and the jury exercising the main powers of the court at law; terms of court, closing its doors for parts of the year when they should be at all times open; the various pleas of general denial, which are inconsistent with the very idea of pleading, and which effectively *bar,* instead of *lead to,* definite issues; the rule that presumes all technical errors to be prejudicial and reverses the whole case instead of correcting the error; and many other inherited rules and practices which may have been appropriate to the conditions out of which they grew, but which now are useless survivals; like

the dew-claws on the deer, the bony growth on the horse's fetlock, or the habit of the domestic dog to turn around several times before lying down—inherited from his wild ancestor who had thus to make his bed in the jungle.

"We know that expert attention to the injured or sick may be rendered useless by delay. We would think it barbarous if the ambulance driver stopped to dispute with the policeman, or called on a friend, while taking the injured man to the hospital. Yet early attention to a legal dispute is sometimes as important as in a medical case; and attention solely with a view to cure the condition is similarly appropriate.

"The sooner a contest is disposed of, the smaller the scars. Delays exasperate, and growing expenses create new points of disagreement, new claims and a greater obstinacy in the fight. It soon becomes a question of endurance, each side doggedly fighting, with eyes closed to everything but the hope of victory and the punishment of the opponent. The mere delay is often a denial of the remedy; and in every case it affects the parties unequally, and makes it more difficult for the court by its final order to put the parties at peace.

"We ought to remember that it is beyond the power of the courts accurately and certainly to vindicate the law and administer justice in every case. There can be only substantial accuracy in deciding any controversy. The chances of error are always present. The more complicated the system of judicial procedure, the greater the number of opportunities for error. The present system makes litigation not only very intricate, but also largely a game of chance or of chances. Every lawyer knows that there are many cases that could be decided either way without clearly outraging any rule of law, or violating any clear weight of the evidence. In a so-called close case this is always so—unless it is our 'close case!' In the actual result—absurd and impractical as is the suggestion—if all such cases were determined by lot honestly cast the decision would not be widely different, and the means by which it was arrived at would have many advantages; it would be speedy, final, fair and inexpensive, and, above all, it would leave no room for litigants to cherish ill will toward the arbiter, or resentment against their opponents.

"The immediate duty of finding the new and more efficient methods of procedure is upon the lawyers and the judges. The public could revolt from the clumsy and dangerous drugging and blood-letting of the old physicians and surgeons, but it could not suggest better remedies, better tools or better treatment. That had to come from an awakened, ambitious and scientific medical profession. It is so with the reform of procedure and of judicial administration. The public may condemn, as it is condemning and has condemned for a number of years; but the relief can be devised and brought to pass only by a public-spirited and expert legal profession. A change, and an early change, is demanded will certainly come. If the bar does not meet the demand with skill and thoroughness, in the spirit of simplicity and directness, the change will come in another form, with the probability of creating as many evils as its cures.

"If this sounds radical and iconoclastic, it is not so. It implies no lack of respect for the law or the courts, or any desire to revolutionize them. There must be an orderly way provided in which to administer the law; and the *abstract justice,* for which we so often hear the appeal made, is quite certain to be *concrete injustice* in very many cases. The vigilance committee is not the permanent agent of justice.

"What is needed is not a new philosophy of court procedure, not a new writing of the laws of the land, not the creation of a new jurisprudence in pursuance of a new theory of justice—not supplanting an obsolete procedure of too much detail, with a code of new and still more complexity—not to supplant 300 sections with the 3,300 sectons of the New York Code. What is needed is a cutting out of all dead branches, a removal from the mechanism of all useless parts, a substitution of the simple for the complex mechanical equivalent, a rebuilding to meet modern needs. Not to tear down Westminster hall or the Inns of Court, but to give them more light and air and a modern equipment, and adapt them to modern needs. We should preserve all that centuries of experience have proved, but relieve them from all that has only historical interest, that merely tells of past conditions, like the brasiers and candlesticks and goose quills and sandboxes of the ancient time.

"It is essential to the success of any plan of procedural reform that it should contain at least the main features, and should be framed along the general lines, of the recommendations of the American Bar Association. I particularly call your attention to these general principles; in order to think upon the subject with any value to one's self or to the cause, it is necessary to keep in mind these fundamental propositions:

"1. A practice act should deal only with the general features of procedure and prescribe only the general lines to be followed, leaving details to be fixed by rules of court, which the courts may change from time to time as actual experience of their application and operation dictates.

"2. The sole office of pleadings should be to give notice to the respective parties of the claims, defenses and cross-demands asserted by their adversaries.

"3. The equitable principle of complete disposition of the entire controversy between the parties should be extended to its full extent and applied to every type of proceedings.

"4. No cause, proceeding or appeal should fail solely because brought in or taken to the wrong court or wrong venue; but if there is one where it may be brought or prosecuted it should be transferred thereto and go on there, all prior proceedings being saved.

"5. So far as possible, all questions of fact should be disposed of finally upon one trial.

"6. An appeal should be treated as a motion for a rehearing or new trial, or for vacation or modification of the order complained of, as the case may require, before another tribunal.

"7. It is essential to eliminate completely all substantive law.

"It should be excluded because it is another subject and should be treated by itself on its own merits. It relates to law-making and not to law-administering, and confusing the two does the greatest injury to each. Procedure is method—pure method; is system—pure system. To be effective it should, like a surgical instrument, a utensil, or weights and measures, be clean and finely adjusted; it should not be 'subdued to that it works in.'

"There are two other rules which seem to me fundamental:

"(a) The first and last word in all procedural improvement should be *simplicity*. Adopt nothing new that is less simple than the present; make the steps between beginning an action and the final judgment, which is finally final, as few as possible—so that they embrace a certain notice of the beginning of

the action and of its nature, a reasonable time to answer, one clear opportunity on each side to object to the insufficiency of the pleading of the other side, and of each side to correct its pleading, a reasonable time in court for trial, and one opportunity for review upon essential points; with the power in the trial court and in the reviewing court to enter judgment in accordance with its decision wherever its decision upon a question of law, as applied to the facts found or undisputed, determines the controversy.

"(b) That no present method should be discarded because it is old, or supplanted with a different method merely because it is new. The old should remain, unless it is unnecessary or ineffective or is supplanted with a better.

"If we are entirely frank, I think we must admit that we have become so accustomed to all the devious ways in pleading, all the preliminary motions which we are wont to interpose as hurdles to the opposite party to be taken before the real trial is reached; to the use of a jury in all cases at law, no matter how ill-suited the questions are for an ordinary jury's consideration; to the rule of a unanimous verdict, which leads us to examine the jury presented with a minuteness and at a length that would never be thought of but for the fear or in the hope of a hung jury—that we instinctively defend them.

"The trial itself, in the preparation of the evidence to be presented, in the manner of presentation, in the objections that are urged, in the arguments upon the admissibility of evidence—all are affected by the presence of a jury in the box. That jury is always human—subject to human sympathies, prejudices and suspicions—and is very often ignorant. We are accustomed to these methods, and we have, somehow, come unconsciously to believe that in them are the real elements of a fair trial, and only through them can legal justice be obtained. We confuse the means and preliminaries with the administration of justice itself. The shorter and simpler the path to the judgment seat, the sooner will justice be done.

"Yet we must also place a share of the responsibility for present conditions upon the trial courts. It is true they should have larger powers, such as they had at common law and as the federal judges possess. But they do not exercise courageously and fully the powers which they now have. They should participate more directly in the conduct of the trial in order to facilitate its orderly progress and clear the path of petty obstructions. The unimportant preliminaries of the trial could be very much shortened, and the dilatory tactics of counsel could be more effectively discouraged. The trial courts to-day are *lawyerized*. We have so strongly contended at all times for our rights in all these matters of preliminary motions and court procedure, have so strenuously protested whenever the court has been a real factor in the conduct of the trial and it has resulted against us, that the judges are generally little more than mere moderators between the contesting lawyers. They should be lawyers of the first rank, and seats upon the bench should be the reward for leadership at the bar. Then the judges could be an important factor in the trial and yet keep clear of improper interference. Then they would not be afraid of committing technical errors in promoting the cause of justice against the wiles of counsel or the prejudice of jurors.

"Our trials of law cases as now conducted tend to develop in the bar two kinds of ability, to set up for them two standards of excellence: the ability and the excellence of swaying a jury by appeals to sentiment, sympathy or prejudice,

as against the ability and excellence of clearly, fully, frankly, accurately discovering and stating the controlling points in the evidence and applying the appropriate rules of law. There is, of course, something to be said upon the other side; but there can be nothing said in favor of the present methods as against changes that would emphasize the essentials and bring the parties to the open battle more promptly, and have the arbiters in the contest more intelligent and more competent. J. W. G.

Reform of Criminal Procedure.—In an address before the State Bar Association of Georgia on June 9 of this year Judge George Hillyer of Athens, Ga., dwelt upon the great increase of crime in the United States and the inadequacy of our existing methods of dealing with it. The address is one of the best that it has been our pleasure to read, and it deserves to be studied by every person interested in the administration of punitive justice.

"As our remedial procedure in criminal cases now stands," he declared, "it is easy to convict a friendless negro or any poor and friendless person who has neither money nor influence to employ counsel or canvass the jury lists.

"Is anybody ever hung who has money—plenty of it—with which to employ counsel, canvass jury lists and circulate petitions? The poor and friendless are sometimes executed, but the rich and powerful never, or almost never? Can such be? Well, yes, and they are; but they are not right. How long will they continue? The answer is plain. Just so long as the pulpit and religious press, the legal profession and good men everywhere fail to do their duty by demanding and obtaining from the legislature the needed reforms in the law of criminal trials.

"Recur again to the figures above given and the armies of officials and police—two hundred million dollars expended by the South every year on her criminals. What a pity that such expensive machinery should have been allowed to get rusty and run down—inefficient and nearly useless. It needs repairs. Take out the bad parts; put in new and better parts. Look where you will in our civilization and you find improvement, progress, with better results everywhere but here; here more necessary and essential than in all else. It is declared in the constitution, the very fundamental law both state and national, that the primary duty of government is protection to life and property. In our boasted civilization I think we are warranted in saying that at this day and hour such protection is far less adequate and complete than it was a hundred years ago.

"Let us hear more about trying to stop the inhuman crimes, crimes enough to make good men and angels weep, even though such a thing as lynching had never been thought of.

"The existing state of things is a disgrace to our civilization. We ought to deal with it like men; find the remedy and then adopt that remedy."

"Now, I put it to you; a few months ago a little eight-year-old girl was assaulted while kneeling at the altar or sacristy of a church, dragged away and brutally murdered. When that case comes on to be tried the law of criminal procedure vests in the judge absolute power by which, even though wrongfully done or through error, he may rule out any item of evidence offered against the prisoner, or decide any point that may be raised by the lawyers in favor of the prisoner, or even quash the proceedings or direct an acquittal and turn the guilty perpetrator loose. True, if wrongfully done it would be error in the judge.

But the law gives the state no redress and no remedy to correct errors. The prisoner goes scot free; once in jeopardy is absolute acquittal, finally and forever. The only thing that could be done would be to impeach the judge; which in point of fact is just no remedy at all, because nobody ever heard of such a thing; and it would fail and do no good if attempted.

"Now, on the other hand, so far as the prisoner is concerned, the law puts a gag in the mouth of the judge; and if he either 'expresses or intimates any opinion as to what has or has not been proved, and the prisoner's lawyers see proper to keep silent at the time but afterwards except to what the judge said, the law declares that the verdict *shall be set aside and a new trial granted.* Every technicality and pitfall makes in favor of the guilty, the whole 'chapter of accidents' tends in his favor, and every condition or point of ingenuity comes into play as an obstruction to the due course of justice.

"Most of the overstrained and technical rules that have grown up in our criminal procedure are attributable to the fact that a long time ago in England there were too many offenses made capital. When under the law such a thing could occur as hanging a woman 'for stealing three yards of silk ribbon,' or hanging two boys 'for cutting a walking stick from a thicket on the side of the highway' humane judges looked about and strained every point to save human life from such unreasonable sacrifices.

"With us in this better day it is only the worst of crimes that are made capital. Our laws are discreet, humane and merciful. The difficulty and the danger is not in what our laws declare and define as crime; or in the penalties prescribed; but in the forms and methods of procedure, for their enforcement. Our judges are men of conscience, learning and wisdom, and, as a rule, impartial. As a matter of fact and of truth the judge presiding over a criminal trial is of all other living men best qualified to aid in ascertaining the truth and promoting justice; and yet this unwise statute we are attacking puts a gag on the judge. The gag law, or 'dummy act,' as Judge Bleckley used to call it, bad for the innocent but good for the guilty, ought to be repealed.

"It is truly remarkable and a fact well confirmed by long observation and experience how apt juries are to do right if you give them half a chance, or when they are not misled; but sometimes juries are misled or overreached or go wrong. In any contest about property, whether it be of the value of a few dollars or a great estate, both sides are equal under the law. Both sides and each side have the right to except, and the same right of appeal for the one as for the other. But when it comes to a question of innocence, then immediately, by the law of procedure, by the strangest paradox that has ever grown up and become imbedded in human history and civilization, the right of exception and the right of appeal are given in the broadest terms and most liberal, easiest, cheapest and most favorable methods on the side of either alleged or real guilt, but are absolutely denied to the side of innocence, no matter how obvious and real.

"I firmly believe that this antiquated and illogical doctrine that no person charged with crime shall be twice 'put in jeopardy' has had more to do with the menacing evils that have grown up to endanger the public peace and safety than any other one matter or thing. A guilty person ought never to succeed in cheating justice or get out of jeopardy until he is punished. And the contrary rule ought to be eradicated absolutely and completely. Put the prisoner and the innocent victim upon a perfect equality. Let the state have the right to except

and to have a new trial and have errors corrected with the same facility which the law gives to the prisoner. Do away with technicalities, as far as possible, touching either side. But so far as they do exist, let them apply to the guilty or the accused as well as to the state, both equally and alike.

"Crimes of violence though so alarming in the signs of the time are not all of this great problem. Consider also the crimes of perjury and graft and forgery and fraud and bribery! Look at what has recently happened, or is happening, in Philadelphia, in Albany, in Harrisburg, in Springfield, in Chicago, in Pittsburg!!! Shames such as these latter are unknown as yet in our own loved state and hardly known at all anywhere in the South. Let us keep it so. *Reform our Criminal Procedure,* so that the law may continually warn business men and especially public men that in Georgia at least there is no escape for the guilty; and that *here,* the way and the only way to keep out of prison is by remaining innocent. Enact the reforms now. Do not wait until the destruction comes, but act now, and thus prevent the evil.

"I would not disparage the power of moral suasion, but we have had moral suasion all along—moral suasion and these bad laws, and with them crimes and lynchings. Riots, bloody and shameful and disgraceful riots, have grown and increased until they are, as the resolutions above quoted say, 'enough to make any Christian shudder or sadden the heart of a patriot.' Now, let us still have the moral suasion, and more of it and stronger than ever; but with moral suasion let us have better and wiser methods of criminal procedure.

"We venture to repeat in part and, though not intended as exhaustive or complete, to particularize as to what amendments are needed.

"Give the state in all criminal cases the same right to except at every stage and to move for a new trial that the prisoner has and throughout the trial put the state and the accused on a footing of entire equality. This will of course require amendment of the state and federal constitutions. Our state constitution has been made over again absolutely new half a dozen times, and is often and readily amended. The federal constitution has been amended fifteen times and one or more new amendments are now pending and being voted upon by the states. This amendment here suggested is more important than any one of the others referred to, and has in it more safety and public peace and human happiness than any of them. So good a work should not be defeated by obstacles even far more difficult to be overcome than any formality in obtaining the amendment here suggested.

"Give the state the same number of strikes and challenges of jurors that the prisoner has.

"Give the state the same right to apply for and obtain a change of venue that the prisoner has.

"Repeal the law which forbids the judge from expressing or intimating any opinion as to what has been proven, and so as to make it his duty to sum up the evidence as is done in the United States courts. Emancipate the judge from the thralldom under which our state statute now places him. If the prisoner wants to testify, let him be sworn and submit to cross-examination like any other witness.

"Let the victim in a rape case, under well guarded rules, testify by interrogatories, if she wants to, thus saving her the shame of a public recital.

"In all cases of crime against the habitation—the home—and in all cases of assassination and of rape or attempted rape, let the jury, if the case and the guilt

are clear, when they convict a prisoner have the power to add to the verdict the words 'without delay,' and let that end it unless on motion made verbally and at once before the same judge who tried the case, as is done in the federal courts, he grants a new trial.

"Let the jury have power to fix the time of execution not less than one or more than twenty days in all cases of the classes last above stated, and unless the judge in his discretion grants a supersedeas pending a writ of error.

"The executions should be public or private, in the discretion of the jury, and if the verdict be silent on this point, then in the discretion of the judge who tried the case.

"Simplify and shorten all motions for new trials and allow only one motion in any case, and let it be provided that no reversal shall be had or new trial ordered in any criminal case, even by the Supreme Court, and no such verdict set aside, on any mere formal error or technicality not seriously affecting the guilt or innocence of the accused and so that, if in the judgment of the reviewing court the verdict is right under the facts, it shall be upheld and allowed to stand, no matter what errors or irregularities in other respects may have crept into the proceeding.

"What is above written is with a great faith, but in no spirit of self-assertion. Innocent and good people are suffering terrible martyrdom as matters now stand. The business man, or the working man, or the professional man, or the farmer, scarcely dares leave his wife or his daughter at home. Cupidity, anger or jealousy cause assassinations and murders. There is nothing sacred, and nobody safe from the despotism and cruelty of crime. The law ought to protect the innocent and the good, but it does not. If anarchy is not already here, we are very near it.

"Defects in the law of criminal procedure call loudly for amendment. The martyr, John Wycliffe, used to cry out, 'Lord, give the king of England light.' And so let us hope that all good men everywhere may now say, 'Lord, give the legislature light.'" J. W. G.

Proposed Practice Act for Illinois.—Hiram T. Gilbert, Esq., of the Chicago bar, author of the present Municipal Court Act of that city, has prepared a revision of the draft of his practice act which was before the Illinois legislature two years ago, and the revised draft is to be resubmitted to the legislature at its next session. The proposed act is very comprehensive in scope, embracing as it does over 2,000 sections and more than 1,300 pages of printed matter. In general, it represents, according to the author, an attempt to provide a more simple system of judicial procedure and the introduction into court practice of modern business methods, such as characterize the procedure of the Chicago Municipal Court, and which have produced such excellent results. The practice act proposed by Mr. Gilbert rests mainly on the principle that all unnecessary verbiage, intricacy, formalism, and repetition should be eliminated, that the judicial organization should be simplified, that the keeping of useless records should be done away with, and, that in general, more modern businesslike methods of procedure should be substituted for the cumbersome system which now prevails in Illinois. The project in general certainly commends itself to intelligent laymen, though the bar is, of course, divided upon its merits.

Two years ago in an address before the State Bar Association of Illinois

Mr. Gilbert dwelt upon the evils of the existing procedure in this state and twitted the lawyers with clinging to antiquated methods when all the other professions had progressed by leaps and bounds. In the course of his remarks he asked:

"Why should not we do as these other men of affairs do? Why not follow the example of our brethren who practice medicine and surgery? Time was when they were as much ridiculed and despised as we are now. But finally the light of reason began to break in. When a new method of treating a disease or performing an operation was proposed they did not cry out, 'For heaven's sake don't change the practice, for we don't want to learn our business over again.'

"They have become diligent in the invention and discovery of methods which go to make good health and prevent disease. They seem to have no apprehension that by advancing the general health of the community they are injuring their own business. They are charitable to the poor and unfortunate. They refuse no one necessary medical or surgical treatment, no matter what his or her financial circumstances may be. They aid in the maintenance of hospitals where poor persons are given the most skillful medical and surgical treatment free of charge.

"What have the lawyers of Illinois done within the ninety years which have elapsed since the organization of the state government, for the improvement of the administration of justice? What have they done to advance the interests of litigants, to secure justice to poor persons, to expedite the transaction of business, to simplify methods of procedure, or to aid in the proper and prompt enforcement of the criminal laws? Practically nothing."

The changes which it is proposed to make in the existing practice are both numerous and radical, as Mr. Gilbert readily admits. "While they consist in part of the elimination of unnecessary forms, and the addition of remedies for cases for which none is now furnished, they are," he says, "in the main, directed to requiring the business of the courts to be managed with a reasonable regard to those rules which guide individuals in the management of private enterprises and without the observance of which those enterprises could not be conducted successfully. Their purpose is to lessen the expenses and annoyances to which both litigants and lawyers are subjected when conducting causes in the courts, and to put an end to many existing rules of practice which the courts themselves have adopted, and which are either unnecessary and unbusinesslike or so unjust in their operation as to have brought well-merited reproach upon our administration of justice."

First of all, he lays down the proposition that all courts of record should be open always for the transaction of business.

"The absence of the judges of the Supreme Court from the seat of government, excepting during comparatively short periods," says Mr. Gilbert, "is an evil which is productive of great injustice because of the delay it occasions litigants. To the prompt and proper transaction of the business of this court it is just as necessary that the judges should be always in attendance, or at least always accessible for the purpose of hearing and disposing of causes, as it is that, for the prompt and proper transaction of their official business, the governor of the state, the attorney-general, the secretary of state, the auditor and the treasurer should remain during the entire year at the seat of government, or, if temporarily absent from the seat of government, should either be accessible to those having

business with them or should leave other officers in their places with whom the business can be transacted. It can be alleged with the utmost confidence that the members of the bar of this state are practically unanimous in the opinion that the judges of the Supreme Court should be in attendance at the seat of government throughout the entire year, excepting July and August, and short vacations at other times, and that provision should be made whereby the court can be convened at any time for the hearing of a cause, the speedy determination of which is of great public importance."

"We have terms of court," he goes on to say, "not because there is any occasion for them but because English courts had them centuries ago and have continued to have them since. Files and records of the courts are kept in substantially the same manner in which they were kept ninety years ago. The present method is cumbersome and expensive and involves the use of twenty words where one would answer the purpose much better. The stenographic and typewriting work connected with our courts should be provided for in the same manner as any well-managed business enterprise provides for stenographic and typewriting service. Many defendants are too poor to pay stenographer's fees while the public prosecutor is furnished by the state with ample stenographic service—a fact which often gives the prosecution a distinct advantage over the defndant." Such a condition of affairs is disgraceful, he argues, and should not be permitted. In this respect both parties ought to be placed on an equal footing.

Another evil of which Mr. Gilbert complains is the "multiplication of law books, and especially of reports of judicial decisions"—an evil which has come to be an enormous burden upon both the bench and the bar. There are nearly 500 judges in the United States who make it their business to write essays in the form of judicial opinions, all of which are published in book form and must be purchased and read by the lawyer.

"Instead of being aids, as they may have been in early times, in the due administration of justice, these judicial opinions have become a source of confusion, delay and uncertainty. Lawyers now very seldom argue questions by the application of elementary principles, but, as a rule, they place their reliance wholly upon opinions rendered by judges which are published in the books of reports, and judges, instead of applying reason, common sense and elementary principles to cases argued before them, are accustomed to demand of lawyers that they produce authority, in the form of judicial opinions, in support of the arguments they advance. Every volume of Illinois reports and Appellate Court reports is filled with repetitions of well-established rules, either of substantive law or of procedure and practice, applied to facts not substantially different from those involved in previous opinions. Many opinions contain copious quotations from previous opinions. They also frequently contain discussions of questions of fact which are of no importance excepting for the enlightenment of the parties in the particular cases. All these are published and must be purchased by the profession. Such a method of transacting business, if adopted by any private business firm or corporation, would inevitably lead to bankruptcy. There is no reason why it should be longer tolerated by the legal profession. There should be a limitation placed upon the publication of opinions and there should also be a condensation, in convenient form, of opinions heretofore published so far as they may now apply in the decision of cases.

"In 1875 the opinions of the Supreme Court in cases in which opinions had

been filed down to that time were only sufficient to fill seventy-two volumes of the Illinois reports. The Appellate courts were not then in existence and hence there were no Appellate Court reports. In 1910 we have two hundred and forty-six volumes of Illinois reports and one hundred and sixty volumes of Appellate Court reports, or in all over founr hundred volumes of reports, being an increase of over three hundred and thirty volumes in thirty-five years. At present these reports are being published at the rate of about fourteen volumes per annum." In the interest of the public, as well as the profession, he concludes, a limitation ought to be placed on the output of these reports.

There ought, however, to be a good book explanatory of the practice in the courts of the state and this should be in the hands of every lawyer. "Such a book on practice," Mr. Gilbert says, "if prepared by a competent member of the bar and published with the approval of the judges of the Supreme Court and placed in the hands of every practicing lawyer, would not only tend to post the bench and bar with respect to those matters of practice which remain undisturbed in the proposed court act, but would also expedite very greatly the settlement of those questions which invariably arise when any change in the practice is made. In England there is published each year a book in two volumes entitled "The Annual Practice," which contains the Judicature Act of 1873, the amendments thereto, a number of other acts of parliament, the rules regulating the practice of the Supreme Court, a multitude of forms and notes explanatory of the rules and with references to adjudged cases. Neither the English judge nor the English lawyer is forced, as we are, to arm himself with an encyclopedia of pleading and practice, a large number of text-books and several thousand volumes of reports in order to prepare himself for the determination or discussion of mere matters of practice.

"There ought," he thinks, "to be an attorneys' association in each circuit in the state, whose membership should not be limited to any particular portion of the members of the bar, but should include every practicing lawyer. Any attorney at law who is fit to practice law is equally fit to be a member of such an attorneys' association and to take part in the accomplishment of the purposes thereof. These associations should have power to institute proceedings to disbar attorneys and to present and prosecute complaints for the remedying of abuses in the administration of justice, and should have a voice in determining what rules of practice, other than those provided by statute, shall prevail in the respective courts. Under existing law, judges, whether of the Supreme Court or of the inferior courts, are not required, before adopting rules, to consult the wishes of the bar or to accept and consider such suggestions as members of the bar may deem it proper to make. If a member of the bar should make any suggestions with respect to any rule of practice, he would do so at the risk of being snubbed and told to mind his own business. In this respect the lawyers of Illinois occupy a different position from those in England. There, the judges of the High Court, before putting in force rules of practice, excepting in cases of emergency where delay would be inconvenient, are obliged to publish their rules and receive suggestions from those who may feel inclined to make them, and, besides this, they are required to report the rules they have adopted to the Parliament for such action as the Parliament may see fit to take."

The standard of qualification for admission to the bar ought, he says, to be raised so that hereafter at least four years' study shall be required and there

ought to be an annual license fee of $25 required for every attorney, of which $5 should be devoted principally to meeting the expense of typewriting and stenography and the rest to go toward the cost of publishing court reports.

The proposed act abolishes the grand jury in all cases and substitutes therefor a board of criminal investigation with power to make inquiries and recommend prosecutions but not to find indictments. The principal objections to the grand jury are stated as follows:

"They find indictments when they ought not to find them and sometimes refuse to find indictments when they ought to find them. Persons are sometimes willing and disposed to go secretly before a grand jury and secure an indictment unjustly when they would not dare to openly make a complaint before an examining court. Furthermore, considerable time often elapses between the commitment of a crime and the assembling of a grand jury and thereby the investigation into such crime may be greatly delayed. In some counties of this state there are but two terms of Circuit Court each year. As no one can be put upon his trial for felony without an indictment by a grand jury, a person arrested for such an offense after the close of a term of the Circuit Court, although willing to plead guilty, may be compelled to lie in jail for nearly six months, and the county may be put to the expense of feeding him during that time, before an indictment can be found. This should not be so. Whenever it is practicable a person arrested for a felony, who wishes to plead guilty and be sentenced, should have the opportunity speedily afforded him for that purpose. Again, grand juries in small counties are oftentimes a needless expense. They have little or nothing to do. In a large number of the counties of this state, possibly in a majority of them, if persons committing felonies could be prosecuted without an indictment by a grand jury, there would be no occasion for their ever calling one. In those counties the grand jury is unnecessary.

"Every defendant in a criminal action for felony should have the same facilities for his defense that the state's attorney has for his prosecution. If the state's attorney has a stenographic report of the evidence, the defendant should have the same and should have it without charge, except that, upon his conviction, it may be taxed against him as part of the costs of the action.

"A poor person on trial for a criminal offense should likewise be properly defended. If he cannot employ and pay a competent lawyer, a competent lawyer should be employed for him and should be fairly and decently paid by the state for his services. A criminal trial should be an impartial investigation for the purpose of ascertaining the truth and the state should be as anxious to develop every feature favorable to a defendant as it should be to develop every feature unfavorable to him.

"There is another abuse of the grossest character which ought to be remedied in the administration of the criminal law. That abuse consists in the unrestrained publication by newspapers of matters pertaining to a pending case which are prejudicial either to the public or to the defendant, as a rule to the defendant, reporting everything said and done about the case, inflaming the public mind against the defendant, rendering it difficult, if not impossible, to secure the impaneling of a fair and impartial jury, or at least greatly adding to the expense to which the county is put in the matter of obtaining a jury. The gentlemen of the press are loud in their complaints about the time consumed in obtaining a jury in a criminal action and yet they, more than any other portion of the community, are to blame

that this is so. Again, it almost invariably happens, especially in a large city like Chicago, that the conviction of a defendant in a criminal case is immediately, and before the argument of a motion for a new trial, followed by editorials in the leading newspapers lauding the jury and commending the verdict as just. This is all wrong and it should not be tolerated. The law should absolutely prohibit the publication of anything in relation to a criminal case from the time of its commencement by the filing of a complaint until its ending by the entry of the final judgment, excepting a verbatim, or otherwise substantially correct, report of the proceedings in court without expressions of opinion, by way of comment, headlines, or otherwise, and this provision of law should be enforced strictly."

The defects in our appellate procedure, says Mr. Gilbert, are very numerous and the system is in need of radical reformation. "Our appellate tribunals should no longer be permitted to discuss and write opinions about mere moot questions which really have nothing to do with the merits of a controversy, but they should be required by law to look to the right and justice of every case, ascertain the truth and apply the law to the truth, without regard to what may have happened in the lower court. In other words, our appellate tribunals should not be organized for the mere purpose of destroying and annuling judgments and decrees because of errors therein, but should be authorized, in all cases where it is practicable, to construct in their places proper judgments and decrees."

There is no provision in the synopsis of Mr. Gilbert's proposed code of procedure forbidding the Supreme or Appellate Court from reversing the judgments of the lower courts and granting new trials for misdirection of the jury, or the improper rejection or admission of evidence, or for errors of pleading or procedure, unless in the opinion of the court to which application is made, after an examination of the entire cause, it should appear that the error has resulted in a miscarriage of justice. A provision embodying substantially this principle has recently been introduced into the procedure of a number of states, it is a part of the plan of Federal procedural reform, and is also found in the Chicago Municipal Court Act which was drawn by Mr. Gilbert. We are unable to see any reason why the Supreme and Appellate courts should be permitted to reverse the decisions of the Circuit courts upon technical errors which do not affect the merits of the case and yet forbidden to reverse those of the Municipal Court for similar errors. We think any code of procedure which contains so many provisions of thorough-going reform as does Mr. Gilbert's bill ought by all means to prohibit reversals for technical errors which do not go to the merits of the issue. J. W. G.

The Success of the Chicago Municipal Court.—The third annual report of the Municipal Court of Chicago, covering the year ending December 6, 1909, is a record of a great court—and a demonstration of what can be accomplished by a court organized on business principles and administered according to rules of procedure that are in accord with common-sense and business methods. From a city in which crime went unpunished or was punished only after long delay Chicago has become a city in which crime is punished, with greater certainty and swiftness than any other city in the United States. During the past year a total of 126,861 civil and criminal cases were disposed of by the Municipal Court, leaving undisposed of 9,358 cases, which represents less than a month's work. Of the cases appealed only about one-tenth of one

per cent were reversed. Misdemeanors are usually tried on the day they are committed or the day following, while more serious crimes are tried within three weeks.

The success of the Chicago Municipal Court has attracted wide attention and inquiries regarding its organization and methods have come from many cities which are contemplating a reorganization of their municipal judiciaries. Courts organized on similar principles have recently been established in Buffalo and Milwaukee. The commission appointed by Governor Hughes to inquire into the jurisdiction and methods of the inferior courts of cities of the first class in New York State has recently recommended a somewhat similar court for the city of New York, and a bill for this purpose is now before the legislature.

The administrative work of the court is centralized in the chief justice and the judges are given a wide discretion in framing their own rules of practice and procedure. This is in accord with the recommendations of President Taft, the American Bar Association and of various practice commissions in the states. In pursuance of this power the court has recently revised and simplified its rules of procedure, abolishing technical common law pleadings and other outworn practices and substituting in lieu thereof simple straightforward statements of the facts upon which each side relies. Among other reforms which the court has recently recommended is the system suggested by Committee "A" of the American Institute of Criminal Law and Criminology, for recording the physical and moral status and the hereditary and environmental conditions of delinquents and particularly of persistent offenders. The court announces that it will urge upon the City Council of Chicago the institution of a bureau for carrying the system into effect.

In two respects the usefulness of the court has been seriously impaired. One of these arises from the rule which makes the grand jury practically a court of review in all cases bound over to the Criminal Court from the Municipal Court, often without having before it the evidence heard in the Municipal Court. During the past year the grand jury discharged more than one-third of the cases in which the Municipal judges had found probable cause.

The other interference with the functions of the court comes from the power of the mayor to release any person imprisoned for violation of a city ordinance, provided he reports such cases with the causes thereof to the City Council. The practice grew up of releasing offenders at the request of aldermen and presently the mayor fell into the habit of referring applications made direct to him for clemency to some alderman for a recommendation. A report was then made to the council that such and such an offender had been released at the request of Alderman So-and-so. During the first year of Mayor Busse's administration more than one-tenth of all offenders imprisoned were released at the request of aldermen, but since his attention was called to the fact that a release at the request of an alderman was not sufficient cause contemplated by the law there has been a marked reduction in the number of releases. The court complains that such a system, which practically gives an alderman or a subordinate in the mayor's office the power to undo the work of the courts, is intolerable to a self-respecting judiciary. It recommends the creation of a Board of Pardons to whom this power shall be entrusted and whose deliberations shall be open to the public.

J. W. G.

NEW CRIMINAL CODE FOR GERMANY.

Draft of a New Criminal Code for the German Empire.—In October, 1909, there was published the Draft of a German Criminal Code, the work of a commission of five experts chosen from the legal profession by the Imperial Court. The work of the commission is based, in large part, on the "Comparative Presentation of German and Foreign Criminal Law," a monumental work representing the combined efforts of all the noted criminologists of Germany.

The Draft makes no attempt at a revolutionary change in the existing system of German criminal law, but adopts in large part the provisions and even the language of the existing code, with such changes, both omissions and additions, as seem to be demanded by the modern considerations of right and justice. Without committing itself to any one theory of criminal jurisprudence or following any particular scientific trend, the Draft aims at a critical consideration of all the numerous reforms advocated by students of the subject during the last decades. It seems, however, to lean more toward the classical than to the modern school in that it considers the criminal law to be built up on the principle of subjective guilt and that retribution is, in general, the primary purpose of punishment.

The Draft consists of two main parts, a general and a special, the latter of which deals with the various offenses in five books. It omits consideration of the by-laws but includes that of the offenses classified as trespasses, as well as the violations of police ordinances.

The question of changes in the forms of punishments is dealt with as follows: New forms of punishment are not introduced; existing forms retained are: the death penalty, confinement in the penitentiary and in the jail, arrest, fine, and reprimand. Certain precautionary measures are included, in part new in substance; in part, only in form. Imprisonment in the fortress is replaced by arrest, that is, deprivation of liberty without prejudice to the station of the convicted as a citizen. The death penalty for murder is not retained as obligatory but may in the presence of extenuating circumstances be commuted to confinement in the penitentiary for not less than ten years. For penance there is substituted a provision that the trial judge may order the payment of damages up to 20,000 Mk. to one injured by the act committed.

The Draft does little toward clearing up the existing confusion in the different grades of imprisonment, leaving it as before largely to the individual states to draw the dividing line. The three forms of imprisonment, penitentiary, jail, and arrest, are distinguished in a general way by the differences in length of term and severity of treatment, but great latitude is left to the judge in deciding which of the forms of punishment he thinks best to impose in a particular case.

The Draft insists on the separation in confinement of different classes of offenders, as also separation on the basis of sex and age. Labor is required of all prisoners according to the grade of their offenses, and the addition of special elements of severity in the manner of confinement may be ordered by the trial judge himself, a wholly new departure from the existing provisions.

The Draft attempts to meet the criticism directed against the present code to the effect that it fails to give the judge sufficient guidance in the determination of what punishment to impose, by devoting a special subdivision to this question. The use of the concepts of "specially light" and "specially serious" cases is new and seems to permit in the former class the discharge of the prisoner without any punishment whatever.

It further undertakes to change the existing code in the particulars in which it is criticized as being too harsh: (a) by decreasing the minimum punishments, admitting extenuating circumstances, and permitting the alternative punishment of fines; (b) the extension of previous discharge to all classes of imprisonment; (c) by the adoption of the provisional pardon or parole; (d) rehabilitation and the cancelling of the sentence on the record; (e) by a change in the law regarding juvenile offenders, by (1) advancing the age limit of criminal irresponsibility to 14 years; (2) abolishing the unsatisfactory concept of "the discernment requisite to a realization of culpability; (3) leaving it open to the judge to commit the offender to an institution for training under state supervision; (f) the development of the concept of diminished mental responsibility; besides changes in a number of individual cases in which the existing code is charged with too great severity. On the other hand the treatment of confirmed criminals is made more severe, by making the commission of a second offense an obligatory ground for increased punishment, and incorrigibility is given especial weight as a ground for increasing the punishment.

The Draft goes even farther than the present code in punishing idleness and disorderliness, particularly in attacking drunkenness and distinguishing clearly between precautionary punitive measures as regards these offenses.

The matter of prostitution is treated with all frankness and, eschewing all hypocrisy and recognizing the existence of the evil and undertaking merely its proper control. Drunkenness is given especial attention, primarily with a view to the treatment of habitual drunkards by commission to an asylum for treatment. The admissibility of the plea of voluntary drunkenness as a defense to criminal prosecution is in great measure reduced.

In the matter of punishability for criminal attempts the Draft also goes farther than the existing law by providing that "whoever shall have begun the execution of a felony or an intentional misdemeanor which has not been consummated shall be punishable for criminal attempt."

In the consideration of the difficult question of subjective guilt, which the present code fails to treat, the Draft offers an attempted solution, by distinguishing between intent, negligence and mistake. "The intent is always punished, negligence always in case of trespasses in so far as the law does not conclusively presume intent; in misdemeanors only when the law expressly demands it." [1]

[1]Furnished by H. G. James, J. D., member of the Illinois Bar.