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Seventh International Congress of Criminal Anthropology.—The seventh International Congress of Criminal Anthropology will be held at Cologne, from the 9th to the 13th of October, 1911. The committee of organization is composed of Prof. Aschaffenburg of Cologne, Prof. Kurella of Bonn and Prof. Sommer of Giessen. E. L.

New German "Forensic-Psychological Society."—In December last a "forensic-psychological society" was organized at Hamburg, to study and conduct investigations in judicial psychology and psychiatry, criminalistis (including crime and methods of combatting it), prison science, reform of criminal law and procedure and allied subjects. The society already has over 100 members, including judges, public prosecutors, psychiatrists, psychologists, physicians, prison officials and others. The president of the society is Herr Irrmann, superior public prosecutor, and the secretary is Dr. Schläger, a prosecuting attorney.

Chair of Eugenics in the University of London.—The press dispatches recently announced that Sir Francis Golton has bequeathed $225,000 for the establishment in the University of London of a chair of eugenics.

"The aims of the department will be to collect material bearing on the science of eugenics and to promote discussion of the same. It is also provided that there shall be established a central bureau to supply information on the subject to private individuals, as well as public officials, under proper restrictions.

"In short, it is planned to extend the knowledge of eugenics not only by professional instruction, but by occasional publications and lectures, as well as experimental and observational work. The functions of the central office are said to embody one of Sir Francis' most cherished schemes. He favored the installment of a sort of register along eugenic lines, to which anyone could apply for information concerning the past history of any family or stock."

It is announced that Prof. Karl Pearson, now professor of applied mathematics and mechanics at the University of London, will probably be the first incumbent of the new professorship. J. W. G.

Death of Madame Pauline Tarnowsky.—By the recent death of Dr. Pauline Tarnowsky of St. Petersburg the new science of criminal anthropology loses one of its most distinguished scholars. She was a favorite pupil of Lombroso and was the leading woman criminologist of Europe. She spent many years in the prisons and dwellings of the poor in Russia studying the criminal classes with a zeal and ardor rarely excelled. Her last and greatest work, *Les femmes homicides,* a volume of over 600 pages (reviewed in this JOURNAL for November, 1910, pp. 666-668), contained special comparative studies of 160 cases of female homicides, based on personal observation and embodying the results of twenty years of research. Her classification of female criminals was

scientific and elaborate. In each case studied twenty different measurements were made of the head and face alone, to say nothing of measurements of other members of the body, and notes were made concerning a great variety of characteristics, such as the shape or size of the ears, nose, teeth, forehead; number of crimes committed; age; season of the year when the crime was committed, etc. Her conclusions were based on a careful study of comparative tables and, all in all, constituted a valuable contribution to the science of criminal anthropology.

She was an active and influential worker in the international congresses of criminal anthropology; she frequently visited Italy, where her studies were pursued, and she enjoyed the friendship of the leading Italian criminologists, Lombroso, Ferri and others. J. W. G.

Institutes of Criminology.—In a brief article in the *Deutsche Juristen-Zeitung,* Vol. XVI, No. 5, p. 319, March 1, 1911, Dr. Hans Gross of Graz welcomes the establishment of clinics or institutes for the scientific study of criminals and crime, not from books, but as occurring in actuality, and he suggests a working plan for such an institute, the idea of which he had first proposed sixteen years ago. It should, he suggests, be organized into six sections:

1. Lectures on criminal anthropology, including criminal psychology, criminology and criminal statistics.
2. A working library (and the writer offers his own as a start).
3. A scientific journal (the author's *"Archiv. f. Kriminalanthropologie und Kriminalistik"* is suggested).
4. A museum of criminology.
5. A laboratory for the use of students.
6. A criminological bureau where all forms of identification can be registered and interpreted; where investigations of the habits, speech, handwriting, mannerisms, signals, etc., peculiar to criminals could be carried on. This bureau should be for law students what the hospital clinic is for the medical student, and should give him the opportunity to come into actual contact with the criminal and his deeds.[1]

[1]Furnished by Dr. M. V. Ball.

The Journal of Genetics.—The first number of *The Journal of Genetics,* dated November, 1910, has appeared, from the Cambridge University Press. It is edited by W. Bateson, director of the John Innis Horticultural Institution, and R. C. Punnett, professor of biology in the University of Cambridge, and is announced as a periodical for the publication of records of original research in heredity, variation and allied subjects and of articles summarizing the existing state of knowledge in the various branches of genetics. The first number contains articles on "White Flowered Varieties of Primula Sinensis," by Frederick Keeble and Miss C. Pellow; "The Inheritance of Colour and Other Characters in the Potato," by Redcliffe N. Salaman; "The Mode of Inheritance of Stature and of Time of Flowering in Peas," by Frederick Keeble and Miss C. Pellow; "Studies in the Inheritance of Doubleness in Flowers," by E. R. Saunders, and "The Effect of One-sided Ovariotomy on the Sex of the Offspring," by L. Doncaster and F. H. A. Marshall. The journal will appear quarterly. E. L.

The Borstal System.—In an address delivered by Sir Evelyn Ruggles-Brisc, chairman of the English Prison Commission in London, March 27, he laid down the following principles which, he said, should underlie the system:

(1) That every young criminal was a potential good citizen up to the age of his civil majority if appropriate and wise means were applied to his reformation; (2) that the diminution of crime in this country was to be sought by the amendment of the individual and not by the terror of punishment; (3) that the element of time was essential if any progress was to be made in the reform of the individual; and (4) that there must be a length of sentence and detention which was not relative to the particular act committed, but to the perverted character of the young man, and that in order to supplement any work done by the prison authority there must be a strenuous and highly-organized After-Care Association to take the lad on discharge. J. W. G.

National Conference of Charities and Corrections.—The Thirty-eighth National Conference of Charities and Corrections was held in Boston, from June 7 to June 14. One of the meetings was devoted to the subject of "law-breakers," at which papers were read by Dr. William Healy of Chicago on "Mental Defects and Delinquency;" by Dr. James F. Jackson of Cleveland, on "Treatment of Misdemeanants," and by Mr. Arthur W. Towne of Albany, on "Organization of Systems of Probation and Parole." Another session was devoted to "Drunkenness," at which a report on "The Relation of the Liquor Question to the Labor Movement" was made by Mr. John Mitchell; a paper on "Scientific Aspects of Drunkenness," by Dr. S. M. Gregory, of the Bellevue (New York) Hospital; one by Prof. Hatton, of Western Reserve University, on the "Legal and Legislative Aspects of Drunkenness," and one by Miss Alice L. Higgins of Boston on "An Educative Campaign for the Prevention of Drunkenness," were read. J. W. G.

New Methods of Marking Criminals.—Dr. Icard of Paris, says the New York *Tribune,* has invented a new method of branding convicted criminals which will greatly aid in their subsequent identification. It consists in the injection under the skin of a small quantity of paraffin. This forms a slight hump, which remains the rest of the person's life without the least danger to his health. A detective arresting such a man, or even before arresting him, would, on feeling the hump, know him instantly for an old offender. No uninformed person need know that the small swelling was a mark of a previous conviction, and would take it to be a natural excrescence. Dr. Icard thinks that, in accordance with his scheme, a regular language of signs might be prearranged by means of the paraffin hump. Thus, for example, it would be agreed all over the world that the right shoulder blade should be reserved for operations upon confirmed criminals. The area thus defined would be divided into three parts. The upper would be reserved for "very dangerous" criminals, the middle for dangerous and the lower for less dangerous. J. W. G.

Medico-Legal Worth of Finger Prints.—In the *Archiv Fur Kriminal Anthropologie und Kriminalistick,* 1911, Bd. 40, S. 320-333, Prof. Dr. Lochte of Göttingen makes a valuable contribution to the literature of finger prints. After narrating how the use of the print first arose and has since been adopted

by the police authorities of numerous countries, he considers the subject quite fully under four headings. First, what is the form and appearance of finger prints, and what causes them? Second, how they can best be made apparent when not already visible. Third, how long they will remain visible upon glass and paper surfaces, and what is the best method of making them do so? Fourth, in what manner they can best be used to identify their originators?

He records numerous notable instances when finger prints have led to the identification and conviction of criminals, giving reference to the literature of the subject. He gives ample detailed information for the making of invisible finger prints to become apparent. His article is particularly full in the description of his experiments to ascertain how long imprints made in various manner upon different substances would so withstand various exposures to weathering as to either remain still visible or to be capable of being made so. Lastly, he directs how, through photography, the appearance of the imprints may be preserved and use made of them for the identification of their origins through comparison with similar imprints from known sources. Appended to the article is a very full bibliography of the literature of the subject.[1]

[1]Furnished by Dr. Bennett F. Davenport, Boston.

Use of Dogs for Police Purposes.—Some years ago Prof. Hans Gross, the distinguished Austrian criminologist, expressed the opinion that the dog could be trained for effective police service, and his belief has been realized. In Germany more than 400 police stations are now provided with "police dogs" (*Polizeihunde*) and the results have attracted wide attention. Recently the Japanese government sent a commission to Germany to study the police dog system, with a view to introducing it into Japan. A writer in one of the popular magazines thus describes the methods of the police dog:

"The police dog will follow his master on his round, will call his attention to anything suspicious, will locate hidden vagabonds, will hold a fugitive at bay and guard him during transportation, will defend his master against an attack, will rescue the drowning, hunt for lost articles, carry messages to the police station and return with an answer; in fact, he will display almost human intelligence, and his service will often be of greater help to his master than that of one or even two policemen. Experience has shown that an inconsiderate and curious crowd is the worst enemy of the police dog and the best ally of the criminal. Through untimely interference, a crowd often makes it extremely difficult, nay, impossible, for the dog to operate successfully. The training of the public is, therefore, of the same importance as that of the dog, if the animal is to be made efficient in his work.

"The following occurrence shows how a police dog of the German capital procured the evidence necessary for the conviction of a criminal, which human skill had been unable to obtain:

"In a village near Berlin fruit had frequently been stolen from different orchards. The police dog, Prinz, sent from Berlin to 'work up the case,' followed the track of the thief from the orchard to a pile of manure and then to a tenement house occupied by a number of imported farm hands. Taken into the house, the dog crept under a bed in the last room he entered and brought forth a shirt and a paper bag full of gooseberries. He then was taken out to the field where the residents of the tenement house were at work and immediately located the owner of the bed. Investigation showed that the shirt

belonged to another workman, from whom it had been stolen, together with 30 marks wrapped up in it. The stolen money was found in the manure pile. The suspected farm hand confessed both the stealing of the fruit and of the money." J. W. G.

The Criminal Museum of Berlin.—A writer in a recent number of the *Revista penale* describes the criminal museum of Berlin as a sort of central institute for the instruction of the police and other persons charged with the protection of property and the maintenance of the public safety. Although not the largest institution of the kind now in existence, it, nevertheless, possesses the most varied and valuable collection known. It is not intended to be a mere show-place or curiosity shop, but a place of instruction. By means of the great number of objects which have been collected and arranged according to scientific principles one is enabled to study criminality in all its phases and become acquainted with the methods and instruments of crime. There are shown anthropometric measurements, Bertillon records, palm impressions, photographs and other agencies for detecting crime. Weapons, instruments for burglary and all the modern apparatus now used in committing crime are arranged on shelves and tables for convenience of study. American enterprise and ingenuity are charged with the responsibility for providing a large part of the paraphernalia now used by European criminals. There are establishments in America, we are told, that are engaged in the manufacture of drills, lock-picks, master keys, "jimmies" and other appliances for breaking safes and opening doors, to say nothing of deadly weapons of every conceivable variety, many specimens of which have been collected by the criminal museum. Among the interesting exhibits is a huge safe whose walls appear bent like sheets of paper. The rivets of the safe were broken through the use of oxygen—a process requiring skill and knowledge not possessed by ordinary thieves. J. W. G.

Belgian Laboratory of Criminal Anthropology.—Through the initiative of M. Renkin, Minister of Justice, a laboratory of criminal anthropology has been established in connection with the Belgian state prison at Forest and will be under the direction of the prison physician, Dr. Vervaeck. The purpose of the laboratory is to provide the facilities for the anthropological study of criminals confined in the prison, the number of whom averages about 8,500 annually. Careful scientific observations and studies will be made of the physical and mental characteristics of criminals by specialists and the results made public in the interest of penal and criminological science. Dr. Vervaeck has recently announced his plans for the conduct of the laboratory and the methods of investigation to be pursued, which latter, he says, must be strictly scientific and impartial and without reference to any particular criminological theory. Similar laboratories have been in existence for years in Italy and Germany, and recently one has been instituted at St. Petersburg (see this JOURNAL, for November, 1910, pp. 618-619). In this country Arthur MacDonald has been advocating for years the establishment by the national government of a somewhat similar agency at Washington, but so far without result (see this JOURNAL, for May, 1910, p. 103 *et seq.*). European experience has long ago abundantly established the practical value of such researches and the examples thus set will in time doubtless be followed in America, where criminal science has hitherto made but little progress. J. W. G.

New Laboratory to Aid Murder Trials.—A new laboratory which may play an important part in future murder trials, says the *International Police Service Magazine,* has recently been added to the already well-equipped Royal Institute of Public Health, Russel Square, W. C.

"Hitherto one of the chief difficulties of the medical witness called upon to determine the nature of suspicious-looking stains on the clothes of a person implicated in a murder charge has been, not to say whether the stains were blood or not, but to prove that, if blood, the blood was from a human being and not from an animal. One of the chief duties of the new serological laboratory of the institute will be to carry out a new test for determining the origin of bloodstains recently introduced by Prof. Uhlenhuff of Germany.

"The new test, it was explained at the institute, is, not meant to supplant the older tests by the microscope, spectroscope, and by chemicals, but is a most important addition to them. It is carried out by means of rabbits which have been previously inoculated with successive small doses of human blood. After a time such a rabbit manufactures in his blood a substance which resembles somewhat the curative anti-toxic bodies a horse produces in its blood when inoculated with successive doses of diphtheria poison.

"The blood of such a rabbit when mixed with a solution of the suspected blood (such as might be made from dissolving out a bloodstain on a garment) gives a certain recognizable reaction if the blood is of human origin, but is unchanged if the blood is of any other animal. The single exception is the blood of the ape. The difficulty here could be overcome by using instead of rabbit serum the serum from an ape immunized against human blood.

"The means for making the test have been installed at the laboratory," it was explained, "so that a medical witness in any legal case can be able to obtain at once positive proof whether any disputed bloodstain is animal or human. The test is now officially required in Prussia in certain medico-legal inquiries, and it is expected by the council of this institute that the work of the new laboratories will fill a great want in this country." J. W .G.

Infallibility of Finger-Print Evidence.—A case was recently tried at the Highgate police court in London which brought out the infallibility of the finger-print test as a means of identifying criminals. A man who had previously been sentenced was accused of loitering with an intent to commit a felony and a Scotland Yard official attempted to prove his guilt by means of finger-print evidence. The accused, however, produced what appeared to be conclusive evidence that at the time of the offense alleged he was in the army, and he was accordingly discharged. Subsequently, however, it was ascertained that the army discharge which he had produced in evidence belonged to another man. Sir Alfred Reynolds, the magistrate before whom he was tried, said in explanation of the case: "Some comments have been made on this supposed failure of the finger-print method of identification and I am glad to correct the impression. The method is a good one and I do not know of a case in which it has failed. The police rightly attach great importance to it, and it is a pity that in this particular case some further information which was in the possession of the police at the time was not put before the court." J. W. G.

Conviction on Finger-Print Evidence in Norway.—The March number of the *Archives d' Anthropologie Criminelle* contains a report of a case of the

conviction, on finger-print evidence alone, of a thief in the assize court of Christiania on October 14, 1910. The only evidence against the accused was the testimony of the director of the identification bureau, Daae, as to the identity of the finger prints of the accused with finger prints discovered at the scene of the crime on a pane of glass and on a syrup bottle. The accused denied the commission of the offense, but the jury, after a half-hour's deliberation, returned a unanimous verdict of guilty. It is said this is the first conviction in Norway solely on finger-print evidence. E. L.

Identification Manual of the Madrid Police.—In an article in the March and April numbers of the *Revue de Droit Penal et de Criminalogie,* Prof. F. Oloriz Aguilera, of the Faculty of Medicine of Madrid, described a manual for the identification of the habitual criminals of Madrid, in use by the police of that city. The plan of the manual was devised by Prof. Aguilera and is based on the possibility of utilizing a direct examination of the lines and ridges of the fingers for purposes of identification without the necessity of taking finger prints. The idea of this direct examination having occurred to Prof. Aguilera, he chose a classification of finger patterns into four types coinciding with that of Vucetich and devised a formula to represent each type, and also subformulas for a more detailed classification, and for four years tested the possibility of applying these formulas for the identification of individuals by direct observation of the fingers. The test being satisfactory, he compiled the manual, which makes a volume of 188 pages of text and 29 pages of instruction. The manual contains the criminal records of 603 individuals habitually resident in Madrid. It is composed of three sections, which he terms the morphologic, the dactyloscopic and the alphabetic sections, respectively. Each of the 603 individuals figures in each of the sections under a distinct number. The morphologic section contains formulas representing an abbreviated form of the Bertillon system for classifying photographs, with cross-references under each number to the data for the same individual in the other sections. The dactyloscopic section contains the formulas representing the finger designs. These are written in the form of numerical fractions, the numerator being a figure representing one of the four main types designated as Adelto, Destrodelto, Sinistrodelto and Bidelto; and the denominator being a number corresponding to one of the subclasse into which each type is divided. The alphabetic section contains the name, occupation, place of birth, parents' name, kind of crime attributed to the person and penal record for each of the individuals listed. Each section contains cross-references to the other two. The manual is intended mainly to solve two problems as to identity. First, in the presence of a person at liberty but suspected, to verify with sufficient certainty to justify his arrest that he is the person wanted. Second, to discover the name and record of persons arrested. In practice it has been found to correctly solve these questions, with much saving of time and labor, if the person in question is listed in the manual. In the first case it is not necessary to arrest the person to solve the question of identity. No prints being required, the fingers can be examined wherever the person is found. If he proves to be the person wanted, the identification is immediate, and if not, it is not necessary to take him into custody at all. E. L.

Is Law and Morality Instinctive?—In an article in the *American Anthropologist,* for July-September, 1910, entitled, "The Morals of Uncivilized People,"

IS LAW AND MORALITY INSTINCTIVE?

Dr. A. L. Kroeber maintains that there has not been an evolution or development of morality in the progress from savagery to civilization, but that, on the contrary, there is no difference between the morality of savages and ourselves, and that the moral element in humanity is basically instinctive. He says: "That any people, or any person even, has ever really regulated conduct by ideas or reason, is a delusion. The delusion is a common one, because it is pleasing to flatter ourselves that our acts spring from purely rational motives. In fact, and of course, all real action precedes and determines intellectual reasoning, which, being analytical, cannot but be *ex post facto* and secondary. It is possible that there may exist beings whose reason is action, not its product; but if so, they will no longer be men. There can be no doubt that the essential moral ideas of man spring from instinct. The repugnance toward murder, appropriation of the possessions of others, treachery and want of hospitality is based as little on considerations of social advantage or logical deductions as the sentiments are common to all races and times. The actions that are naturally the most abhorrent to everyone, such as cannibalism, incest and lack of parental or filial devotion, are so thoroughly instinctive that these crimes have hardly to be dealt with by most people. In the matter of incest, it is well known that the common explanation of its enormity, as consisting in its inevitable consequence of deterioration of race, is entirely fallacious. We know from countless generations of domestic animals that it is only an extreme of close breeding that produces loss of racial fertility and individual vigor. Yet the crudest savages and the most refined philosophers abhor it equally."

Prof. Kroeber's conclusions are interesting and suggestive from the standpoint of the theory of the "natural offense" as formulated by Garofalo. If they are entirely correct, the attempt to prescribe rules of conduct by legislation is wholly without justification. It is interesting to note that Garofalo regards the natural offense as a violation of the emotional feelings.

While Prof. Kroeber's statement is extreme, and we can hardly assent to the proposition that conduct is in no degree regulated by reason, it brings out in a picturesque way the undoubted truth that the causes which regulate human conduct to a very large degree do not depend on conscious reasoning. E. L.

The Psychological Action of Punishments.—An interesting article on the above subject is published in the *Archivês d'Anthropologie Criminelle,* for January, by Dr. Maxwell. He says that punishment originally was simply compensation. It depended on the will of the victim of the crime, was regulated by private vengeance; the personality or intention of the delinquent being of no importance, the main idea is to render evil for evil. All the members of the clan were responsible for the damage, whether wilful or not. The first progressive step was to individualize responsibility, the clan being discharged of responsibility if it surrendered up the criminal. This is the germ of individual responsibility. In connection with the idea of compensation it formed the *lex talionis.* The next step was to separate voluntary and involuntary acts and to analyze the intention. This was principally the work of religion, which combined moral notions and transformed the idea of compensation into that of expiation. Finally, however, punishment came to be conceived of as example. In modern psychological language it plays the inhibitive role. But under what conditions will it be truly inhibitive? Evidently when the idea of the act is associated with disagreeable or painful feelings. Dr. Maxwell thinks

that the present system of punishments does not fulfill the function of inhibiting crime, but rather stimulates it. The present system aims largely to make punishments equal for the same offenses, while the criminals punished present a variety of characteristics and are very unequally affected by the same punishment. In particular, they differ from honest men, and what would operate as an inhibition in the case of an honest man will not so operate in the case of a criminal. He concludes that the idea of equivalence should be substituted for that of equality, and that the punishment should be adapted to the individual to be punished. This view overlooks the fact that the effect of punishment is not confined to the individual punished, nor intended to be, although Dr. Maxwell thinks that the possibility of reformation by punitive treatment has been exaggerated. In the case of the man who has committed a crime, the act has evidently not been inhibited. Dr. Maxwell, however, exaggerates the differences between different individuals and underestimats the necessity for an inhibitroy force in the case of honest men. The existence of punishment as inhibitory force in the case of honest men. The existence of punishment as The value of punishment as psychological motive lies in its being adapted to exert an inhibitory effect, not on the smaller number of exceptional individuals, but on the great mass of the people. E. L.

Prisoners Aid Review.—At the last meeting of the American Prison Association a national prisoners' aid society was organized, there being already some thirty state organizations in existence, each having little knowledge of the activities of the others. These have now joined hands and organized the national association for the promotion of the following objects:

"The development and extension of the work for released and other prisoners, including prison visiting, inspection of correctional institutions, assistance to prisoners, probation, parole, research, legislation, and public education on the problems of penology and criminology."

At the initial meeting of the national society it was decided to publish a monthly bulletin "to promote coöperation between the societies now in the field, to be a medium of general information in the prison field, to develop public opinion regarding the proper treatment of crime and criminals, to aid in extending prisoners' aid work—and, in short, to be a kind of 'trade journal' in the correctional field."

The first number of the *Review,* as the new publication is named, appeared in January of the present year, with Mr. O. F. Lewis, secretary of the New York Prison Association, as the editor. The publication office is at 135 East Fifteenth street, New York, and the subscription price seventy-five cents a year.

Drastic Legislation Against Alien Criminals Proposed.—Judge Lewis L. Fawcett, of the county court of Brooklyn, N. Y., in sentencing two Italian kidnapers to long terms in the state prison recently, took occasion to advocate drastic measures for the suppression of crime in New York and for preventing the further immigration into this country of criminals from abroad. Judge Fawcett suggests that a certificate of good moral character, signed by the chief of police of the district from which he comes, be required of every alien admitted to the United States. Those without such certificates should be immediately deported.

"If the newcomer has served time for some trivial offense," he says, "the

fact should be stated on the certificate, and the period of residence in this country required before the immigrant can take out naturalization papers should be lengthened in proportion to the seriousness of this previous offense." When a foreign criminal is convicted here and sentenced, said Judge Fawcett, the judge who administers his punishment should have by law the right to deport him, at his own discretion, when he has served his term. J. W. G.

Treatment of the Convict.—Mr. Warren F. Spaulding, secretary of the Massachusetts Prison Association, in a paper recently published in the *Prisoners' Aid Review,* pleaded for more humane treatment of convicts.

"I remember," he said, "when methods of treatment based on the assumed manhood of the criminal were subjects of sharp and vigorous debate. When the leaders of prison reform suggested the fundamental features of the reformatory system, they were met by men of very large experience in dealing with prisoners, who looked upon the new penology as visionary, and said to its supporters: 'You do not know these men; you cannot deal with criminals in this way. They will make no response; they will take advantage of you and destroy all you are trying to do.' The favorite word was 'discipline'—meaning repression. They would not admit that men could be trusted, or that any successful appeal could be made, except to fear.

"All this has changed. The men who dared to make experiments on the assumption that 'the convict is a man,' and is responsive to the appeals and motives which move other men, have demonstrated that they were right."

Speaking of the opinions expressed at the recent meeting of the International Prison Congress at Washington, he observes that:

"One note was sounded by all speakers. Everywhere the demand was for classification; everywhere for individualism. 'The convict is a man,' but there are many kinds of men, outside as well as inside the prison. The old system, under which men were treated in a mass, was unanimously condemned. Every person charged with crime must be dealt with as an individual, and should be carefully studied. He should not be disposed of mechanically, or by machinery. Criminals must be sifted. Many offenders should be kept out of prison, under supervision and helpful restraint, and those awaiting trial should not be mixed with those already sentenced.

"Two other classes were considered—vagrants and inebriates. The foreign delegates were deeply interested in the problem of vagrancy, which it very different from that of this country. In the discussion of this question the idea of classification was prominent; instead of considering vagrants, mendicants and tramps as an indivisible class, there was an absolute agreement that several classes should be made, and that treatment suitable to each class should be devised. Those who are vagrants and mendicants because of circumstances beyond their control (such as temporary incapacity or infirmity) should be assisted until they can be restored to self-support. Those who are wandering about in search of work should be provided for in refuges or relief stations, where they must work, or by public or private charity. For the third class, of professional vagrants, repressive measures should be used, including compulsory farm labor and long detention. That this classification should be effective, it was deemed to be important that a system of identification should be established, with an exchange of information regarding the professionals. Release from imprisonment should be upon parole, and an effort should be

made to readjust them to industrial life. In this work there should be coöperation between public and private effort.

"The problem of inebriety was discussed at length. The present system of dealing with drunkenness as a crime had no defender. Interest centered in the consideration of the results of the work of special establishments in which the drunkard is detained for long periods, and the congress voted that these experiments had been successful and that the further extension of this kind of detention, under state control, is desirable, with a view especially to arresting the habit in its early stages and to the avoidance of useless and repeated sentences to imprisonment. The importance of outdoor work was emphasized by many speakers, and much interest was taken in the suggestion of farm colonies for minor offenders, including drunkards. The fact was noted that Toronto is following Cleveland in this matter, and is to provide for the freer treatment of misdemeanants.

"Incidental to the subject of imprisonment, and involved in it, the question of the relief of families of prisoners received careful consideration. Out of the experiences of those who deal with prisoners and of those who come in contact with those dependent upon them made a complete agreement that, under our present system, the punishment in many cases falls upon the innocent rather than upon the guilty. The Washington experiment, in which the families of men imprisoned for non-support receive a part of their earnings, commanded general approval, but it was generally agreed that the system could not be universally applied, as it depends upon the employment of convicts on public work, on streets, etc., which would not be tolerated in most places.

"But there was substantial unanimity as to the proposition that it is desirable that the state should allow payment to be made to prisoners and that provision should be made that money credited to prisoners should be available for the assistance of their families if in need. No definite plans for accomplishing this were agreed upon, as the prison systems of different countries vary widely.

"Measures for the prevention of juvenile crime, vagrancy and idleness were suggested, including the enforcement of parental responsibility; greater coöperation between school authorities and the public; a better school system; a multiplication of playgrounds; lectures to parents and a stronger influence on the part of the press and the pulpit to enforce the sentiment that the best bulwark against juvenile delinquency is to care for the children in such a way as to prevent them from becoming vagrants and idlers." J. W. G.

Juvenile Court Procedure.—Justice Robert J. Wilkin of New York City, in the *Bench and Bar* for April discusses the principles which should govern in the procedure of children's courts.

"Not long ago," he says, "there were few distinguishing differences in the manner of the treatment of the child and of the adult. It is true, following the common law, the statutes provided that a child under seven was presumed to be incapable of committing a crime, and that between seven and twelve evidence was necessary to remove this presumption; but until quite recently the only importance given a child in the contemplation of the law was when property rights were to be recognized or protected and then the equity or chancery rules were applied. When there were no property rights, there was no guardian. To be sure, the question of the custody of the child as between

parents, as well as others, was not unknown, but the child as an entity apart from the parent was given slight attention. Children charged with offenses, until recently, were tried in the same tribunal with adults. In many jurisdictions this is continued even today. In others, we have established children's or juvenile courts, where only cases in which juveniles are charged with derelictions are tried. The establishment of children's or juvenile courts in this country has brought prominently to the attention of the bench and bar the peculiarities of the civil and criminal practice. In most of the states usual practice and procedure under the criminal law has been followed, but in some others, in the hope of relieving the child of any criminal stain upon its name, which in after years might tend to interfere with its best development, the equity or chancery practice of the civil law has been invoked. This is particularly the case in the juvenile court in Cook County, Illinois, and an attempt to follow this plan is shown in the recent statute providing for the extension of the powers of the County Court of Monroe County in New York State (Laws of 1910, Chap 611).

"The writer is wholly in sympathy with the idea of those who would relieve the child of any stigma except that which directly follows the commission of some prohibited act; and it is hoped that this much desired result may be accomplished, although it is difficult for the mind to grasp the idea of treating a childish dereliction before the law in any other way than the ordinary one followed by human nature. A child commits some act upon the streets of the city. It may be the taking of property that does not belong to it; it may be the destruction of property wantonly or carelessly; it may be any of the other many acts which are prohibited by the law. The child may or may not live in the immediate vicinity of the place where the act was committed, and his identity may or may not be known. If not known, how is the civil law to deal with the case? Under what particular provision of the civil law is contained the right to summary arrest and detention prior to filing the petition before the courts? If the identity is known, then what right has the officer to apprehend this misguided child? If the child is apprehended has he not a ground of action against the officer for unlawful arrest or interference, and what are the parents' rights with respect to being deprived of the benefits of the custody of their child?

"If the child is arrested, and the provisions of the criminal code do not apply, then it is necessary to go to a civil court to sue out a writ of *habeas corpus*, to obtain its freedom. Is it not better to have the provision for bail under the criminal code apply? This difficulty was not recognized in the organization of the juvenile court in Cook County, Illinois, because no proceeding begins there except by petition. During the year 1909, the writer is informed, only about 3,500 cases came before the court. Diligent effort was made to ascertain the number of children of tender years who were arrested upon the streets of Chicago and taken to the municipal court or ordinary courts for adults, but no such record could be found, although the writer was informed that it was frequently admitted that a large number of children were taken before these courts and their cases disposed of. The same difficulty apparently presents itself in the beneficent statute applying to the Monroe County Court in New York State; but here it is recognized and provision is distinctly made to obviate it. Further on, provision is also made that

where a child is brought before such court or magistrate the case shall be immediately transferred to the County Court; but already the child has been contaminated by its public arrest by the police by its arraignment before a general magistrate, and by its association with the adult magistrate's court.

"Is not the question then one whether or not nomenclature is of essential advantage? Is not the practice in the criminal procedures of our states, a more simple running and more equitable, just and comprehensive proceeding than could be built up under any form of civil procedure? If it is, then is it not possible for the lawyers of the country to frame a practice which would contain pleadings and procedure affecting children, which in themselves would embody all of the protection given to him who is charged with an offense against the law, and at the same time eradicated entirely all of the peculiar criminal processes which would stamp the child as a convicted miscreant in after life?

"The children's or juvenile courts of the country are but a few years old. The idea of a separate tribunal to discover the facts and apply a remedy in the case of juveniles has in several jurisdictions been tried and the higher courts have determined the enactments unconstitutional. Is it wise then to attempt to engraft on to the law an entirely new procedure and extend a jurisdiction not contemplated by the farmers of our great system of jurisprudence, and which will take many, many years to develop, even if such is possible, or shall we apply the laws as we have them to-day, authorized by the usage of centuries, sustained by the wisdom of the greatest minds of all time, and by recasting the names of a few of our forms, can we not in the best way protect the child as well as safeguard the rights of the citizen?"

J. W. G.

Reform of Juvenile Criminal Law in Hungary.—In January, 1910, a new epoch in the treatment of juvenile offenders began in Hungary. In an article in the *Zeitschrift fur die gesamte Strafrechtswissenschaft,* Bd. 31, Heft. 6, Dr. Erich Heller says on that date Hungary stepped into line with those Anglo-American countries which have begun reform in criminal procedure. The new code provides that no children under twelve years of age shall have a criminal procedure entered against them. Between 12 and 18 years they are liable to punishment, but this last must always be conducted with an eye to their reformation and must be based upon their intellectual and moral grades of development. The new idea in juvenile procedure is directed towards a separation of youthful offenders from adult criminals, to the development of organized protection of children, to betterment of actual court procedure in these cases, to the development of measures calculated to reform those who are under twelve years of age and to many educational matters concerned with juvenile offenders. It is particularly noticeable in this new law that considerable attention is paid to duration of sentence—something that is mostly avoided in our own juvenile courts. In suitable cases the young offender is definitely sentenced to an institution of the prison type where he undergoes a systematic treatment. The detailed provisions for this treatment, based as they are upon scientific and ethical considerations, form one of the most noteworthy chapters in modern criminology. It is worth our while to consider them somewhat intimately.

The new law discriminates closely between those who are sentenced to more

than a month and those who have a term of shorter duration. The imprisonment of those who have the longer term must be carried out in a prison which is especially adapted to the treatment of juvenile offenders. The delinquent may be taken to the prison by various authorities, his guardians or the police, according to the danger of his running away. Once in there he is turned over, above all things, to the teacher of the institution or the official spiritual adviser. He is in charge of these much more than of the jailer and his immediate supervisor should be an especially trained and mild-hearted individual. The youthful prisoner during his term undergoes an extremely systematic process of treatment. For this purpose his term is divided into periods and the offenders are divided into groups according to their individual needs and into classes according to their behavior.

In the first period of imprisonment the young delinquent remains by himself both night and day unless the official physician believes it to be dangerous for his mental condition. During this first period he meets clergymen of his own religious faith, his official teacher and the supervising official for a total of four hours a day with the separate visits so arranged that there is from one to two hours between them. It must be especially provided that the admonitory conversations and instructions present together a systematic whole and not be contradictory. Now the principal aim of this first period is not so much the actual reformation of the offender as it is to gain knowledge of his character and the best means for introducing reformatory measures in his individual case. If the offender happens to be a backslider or a confirmed criminal during this period of segregation he must work from four to six hours a day. The remainder of the time, in any case, the prisoner can occupy himself with reading selected books.

During the second period the offender still remains partially, but with more intermissions, in solitude. These intermissions bring him into companionship with the group corresponding to his own characteristics in school, in chapel, in the fresh air and at meal times. Youngsters who are sentenced to a period not more than three months may during their entire term remain in this second period of treatment. Or, if it is thought advisable by those in charge, at the end of the second period there may be entered a petition for release.

Entering upon the third period is a matter for determination by the officials of the institution. This period is characterized by the fact that most of the time of the offender is spent in company of his fellows in the general schoolroom or workshop and he goes to his cell only for the purpose of preparing for his lessons and at night.

If the number of solitary cells make it possible, the last period, perhaps fifteen days, of the offender's term is again to be spent in solitude. At night, in any case, if there are cells enough the offenders sleep separately, except where the physician thinks at any time it is not for the mental welfare of the individual.

Besides this division of the term of imprisonment into periods there is also according to the new law to be a separation into classes with regard to the possibility of the individuals exerting bad influence upon each other. In what class the individual belongs is to be determined at the end of the first or observational period. There are three classes formed on the basis of

behavior and in some instances an individual may belong at one time in one and at another time in another. His promotion into a better class depends on his behavior while in the institution.

The total aim of this treatment in prison is especially designated at social betterment. The individual is to be directed toward industriousness, patriotism and useful citizenship. The designated methods of bringing this about are formal education, religious instruction, vocational instruction, a strict, but humane, discipline and reward of the prisoner through promotion into groups and classes which are allowed special favors.

Those who are sentenced for a term of less than a month must, if possible, serve their terms in special institutions for juvenile offenders. These individuals may be kept in solitary cells or in confinement which is especially conceived for a group of juvenile delinquents. Another section of the new law provides in detail for inspectors for juvenile offenders which correspond pretty closely to our probation officers, but with some increased powers in as much as they visit them in institutions.[1]

The Sources of Crime.—Hon. Frank J. Murasky, judge of the juvenile court of San Francisco, in a recent address on the "Source of Crime" dwelt upon the duty of the state in respect to juvenile offenders. He said in part: "Up to the time—and it is a very recent day—that the state took up the work of studying and caring for juvenile offenders, society had regarded the criminal as a being *sui generis,* with a method of thought, a philosophy all his own, with inclinations peculiar to a species of man preordained to law-breaking, a creature apart, by reason of his inate as well as acquired characteristics, from his fellows of the human race.

"At least this seemed to be our attitude. If we thought upon the subject at all it was with a tendency to believe that the highwayman, the burglar, the thief was born with a mask upon his face and a pistol in his hand. We appeared to feel that in time, in accord with his destiny, he would run afoul of the law, and the machinery provided by the state would remove him from our midst for a period during which we would have respite from his depredations. 'He is criminally inclined,' was a favorite excuse for dismissing him from our mind. We dealt with effects and not with causes. We lavished money upon prisons and prisoners; we knew nothing, thought nothing of the things which led men to the prison gates. We knew only the criminal as a finished product and not the criminal in the making. But, after centuries of dealing blindly with the canker upon its organism, society has suddenly quickened to the work of looking for and as far as possible removing the poison that causes the sore. I say 'society' advisedly; for it is not a work being done only in the United States, but all over the world. Representatives of the English, the German, the Swedish and the Japanese governments, and interested men from France have made personal study of the system of dealing with the beginners in crime as it obtains in the juvenile courts of our country.

"We have come to realize that the boy transgressor in many ways is psychologically the same as the boy who never offends; that frequently he drifts into a career of crime with the current in which his life is set, just as he would have drifted into decency were the tide the other way. The

[1]Furnished by Dr. William Healy.

longer he travels the more strongly does he feel he is in a stream bearing him to his preordained destination; and in him we have what we please to call the confirmed criminal. Society's work now is to take him from the current before it grasps him too fast. To do this we must know him. We must know as far as we may his very being, his soul, his manner of thought. We must know how he is physically. We must know the things which make him what he is. We must know those who influence his life; his parents, his friends, his teachers, his employers.

"The causes which lead the children into offenses against the law and tend to make them criminal are as multitudinous as the conditions and environments which surround them. The cry is often heard when a boy goes wrong, 'It is the parent's fault.' Often it is. But the work of the state in such a case is to better the parent that the child may be bettered; to deal sympathetically or severely, as necessity may require, with the delinquent or unfortunate father or mother; to check dissipation, to prevent separation of spouses, to aid the distressed, in a word, to build and foster the home that to its young inmates it may be an influence for good. This is constructive work. It requires never-ceasing attention upon the individual case, as the erection of a building needs the supervision of the architect until it is completed.

"Creating conditions means, among other things, that society must guard his health; that the state must enact laws which prevent his young life being used as a tool; that he shall not be forced, under the guise of business, to serve the wants of libertines; that he shall not be compelled to give the time needed for schooling or for rest to the demands of employers; that he shall not be permitted to gather with his fellows unattended in places of amusement during the night hours and in promiscuous company; that he shall not be offered or allowed the temptations of the saloon; that he shall not be given the chance to hear the cry of the streets. In these matters the state may and must act positively.

"So long as we must live in crowds we must enact laws which will protect children from the dangers of crowds. No child should be permitted to visit places of amusement unaccompanied by some proper guardian. Let us realize thoroughly that a tendency to crime has a cause, and that by the removal of the cause the making of a criminal may be prevented; and let us use our efforts to the end that every influence of the state may be used to work upon the cause." J. W. G.

The Alternative Death Penalty in Nevada Criticized.—The editor of the *Central Law Journal* in a recent article criticizes the Nevada statute which allows condemned persons to choose one of two modes for the carrying into effect of the death sentence. (See this *Journal,* May, 1911, pp. 91-92.) The constitutionality of the statute, says the editor of the *Journal,* is doubtful, and in additional it is repugnant to the morality of the common law which treats suicide as a *felo de se,* punishable by forfeiture of estate.

"In *McMahon v. State,* 53 So. 89," says the editor, "the Alabama Supreme Court affirmed the conviction of murder of one whose defense was that the deceased took his own life. The trial court instructed that 'if the death was the result of preconcert * * * between the men, that each take his own life, then the survivor would be guilty of murder in the first or second degree.' This proposition was held to involve the question whether suicide

was a felony. It was said: 'At common law self-murder was a felony, but since with us no forfeiture of estate penalizes the felon, and since the dead cannot be punished, no penalty can be inflicted on the self-destroyer. But collateral consequences may, and do, upon occasion, depend upon the feloniousness of self-murder. * * * That intentional self-destruction by one without avoiding mental distemper is *felo de se* is a generally recognized criminal doctrine.'

"The Alabama decision is wholesome, just as every implication to be drawn from the Nevada statute is pernicious, consistent, however, we may say, with the tenderness of divorce legislation for the gaily bedecked and bedizened, who seek its hospitable doors. But, of course, the supposedly sufficient answer to all of this is that, death impending, there is no choice in regard to life at all, and the selection of the means of death is not the choosing of death. This may be true. Let us take the alternative proposed. The felon will have choice of death by hanging or death by poison. If he elects poison, he is supplied with hydrochloric acid sufficient in quantity to cause instantaneous death. If he makes no choice, he is hung. It is well known that hanging may not produce instantaneous death. Indeed, it has been known to prove abortive and always it has been the custom for experts to say when death has supervened before the body is cut down. Therefore, when a state, which looks upon hanging as a civilized mode of execution and invites one sentenced to death, to kill himself more expeditiously than the state will kill him, it invites him to self-murder. Suppose that a state extended choice in this matter by providing death by torture, slow but absolutely certain to the end intended. Would not a man having the liberty of choice be taking his own life, if he forestalls the appreciable period he would live during the torture?

"Among Christians generally it is regarded as heinous in morals that one should shorten his own life to escape from trouble. There may be and undoubtedly are some who do not thus regard self-destruction. They conceive that their lives belong to them to do with whatsoever they will. But a man who so believes seems to us bereft of a proper sense of responsibility to others.

"But whichsoever view is correct, no state has the right to treat with contempt the conscientious scruple, that no one should compass his own death before allotted time to die. This assertion is not met by saying, that those who thus believe should refuse to elect.

"Furthermore, it may be asked, is there any mercifulness in the privilege of choice? Why should the state hang before a doomed man's eyes what would but add to the misery of his situation, and correspondingly afflict those who would weep over his death? Any law smacks of barbarity which may tend to interfere with the resignation the condemned and his relatives may seek in such an extremity. The sentiment behind it is maudlin in part and excessively materialistic as to the rest.

"Is there, or not, a serious question here of the validity of such legislation? A judgment may in a civil suit give alternative relief, but it will hardly be contended that a sentence may inflict alternative punishment, except that in misdemeanor, imprisonment may be the alternative of refusal to pay a fine. This, however, is not a real alternative. It presupposes inability to pay the fine. But in a sentence of death the physical pain involved in its being carried into

effect is part and parcel of the sentence, as is also whatever mental suffering is endured. If one method involves less of either than the other, there is an alternative that suggests a want of uniformity in the sentence of death. If there is no material difference in the modes of infliction, then why would the law be enacted? The very enactment of the law presupposes that it speaks regarding as matter of substance and not of form." J. W. G.

Should the Accused Be Forced to Testify in His Own Case?—Hon. R. A. Burch, justice of the Supreme Court of Kansas, in a recent address before the State Association of County Attorneys of Kansas advocated a change in the criminal code so as to require accused persons to testify in regard to the facts of any charge against them. Among other things, he said:

"Attention has been called to the fact that laws and institutions suffer in the estimation of the people because, having been established for conditions now outgrown, they resist their own improvement too long and are in adequate to meet the needs which social progress has evolved. A single illustration from the criminal law may be considered. Many a guilty man escapes punishment, to the confusion and humiliation of the law and order forces, because he can not be required to testify and because as a corollary, his failure to testify can not be considered to his prejudice. The prosecution must disclose everything to him. The names of all known material witnesses for the state must be indorsed on the indictment or information at the time it is filed. The accused then sits by until the last item of evidence against him has been introduced at the trial when he springs a story carefully prepared to suit the exigencies of the case, or, if he chooses, remains silent while the court in solemn phrase instructs the jury that he is presumed to be innocent of every element of the offense charged against him and that no inference can be drawn from his failure to testify. The existing rules had their origin in humane efforts to protect unhappy prisoners who had no counsel, who could not testify at the trial and who could not appeal from star chamber practices and from the barbarities of a penal system which is now regarded with feelings of horror. At the present time there is no valid reason why a person charged with crime should not be obliged by law to testify at any stage of the proceedings precisely the same as any other witness with knowledge of the facts."

Suggestions as to Trial Procedure.—In a recent article in the *Chicago Legal News*, Franklin A. Beecher lays down a number of propositions which, in his judgment, ought to govern in the procedure of a criminal trial. He says:

"Of all the departments of human knowledge, law is the least progressive. In many respects it still continues in the old trodden path of tradition, and any suggestion to deviate from the old beaten path is met with the argument that the old principles as established by the judges and jurists of the past are the best, because they were the result of that mysterious gift of legal lore and logic by which the law became the perfection of human reason, so that nothing is left for the modern judge and jurist to do but to follow in the path of the past. Trial procedure is very much the same today as it was in the sixteenth century. With few changes in evidence, especially relating to competency of witnesses, etc., the law of evidence has undergone comparatively few changes.

The tactics in trial procedure, as adopted by advocates at this day, are the same as were applied by advocates in the early days of the present method of trial procedure.

"In the presentation of any case three significant elements manifest themselves, the legal, the evidential and emotional. Experience teaches that the average trial of a case turns upon the evidence or the testimony that is presented. This testimony is given by witnesses who naturally become the objects for tactical treatment, and for this reason the emotional element enters largely into the conduct of a trial. The method usually adopted by advocates is to discredit the witness' testimony and if possible to degrade him. The basis upon which this is sought to be done is to attack the witness' moral character. His mental or physical deficiencies are not taken into account, unless they are brought directly in issue.

"The moral standard by which the truthfulness of the witness' assertions or statements are to be measured are such as exist in the average mind. Courts of last resort have often enumerated the indices by which these moral deficiencies are to be determined by the trial judge and jury. They are the living voice, with its peculiar accent, emphasis or intonation, the witness' appearance, his countenance, looks, expression of face, manner, readiness or reluctance, and many other nameless indices of truth.

"In applying these standards the average man's method of reasoning upon mental phenomena is as erroneous as his reasoning upon physical phenomena. For he reasons that smoke settles on a humid day because the atmosphere is heavy, that the chimney draws air from the kitchen into the stove to make the draft, that bodies in motion come to rest of themselves, that a body floats because it is lighter than the liquid or gas it floats in, that dew falls, etc. As examples of his method of reasoning upon mental phenomena, he reasons that a man with a nervous twitching eye must be dishonest, that a man with thin lips and a set jaw is cruel, that a man who is naturally restless and uneasy must be guilty of a crime, and to cap the climax, a jury, in an action against a railroad company for damages, for injury willfully inflicted on plaintiff intestate, came to the conclusion that the fireman on the locomotive, when approaching a highway crossing, toward which a traveler was leisurely driving, actually knew what was in the mind of such traveler, and what he would do under the circumstances.

"The most important object the court ought to have in view in the examination of witnesses is to determine the value of their statements and depositions from the standpoint of the witness' ability in apprehending the facts accurately to which they testify, as well as their ability to tell the truth. It must be borne in mind that the average witness is bent upon telling the truth as he perceived it, yet it is apparent that for this reason when a number of witnesses testify to the same set of facts they vary in their statements. For, if they had observed accurately they should have given identical accounts. The cause for this variance ought to be ascertained. Is it due to a defective, perceptive faculties or is it due to a natural inherent mental defect? These are the questions which ought to occupy the mind of the court and jury before the moral aspect of these witnesses' testimony is to be weighed. For the purpose of ascertaining the correct solution of these questions a logical and proper method of adducing the evidence, based upon psychological

principles, ought to be adopted so that justice will be done in accordance with the truth established. It is a matter of common knowledge that there are differences in observing powers, resulting from differences in the natural and intellectual culture of the observer, and why should not a rigid examination be made into these differences, even when they are not directly in issue, for the purpose of ascertaining their true causes? The able judge through long experience soon learns how to unravel opposing and conflicting testimony and how to see through subterfuges, in perceiving the difference between an honest embarrassment and a conscious falsehood. Yet there is much hidden from him, unless specially trained or counselled by experts. The spirit of the age is toward expertism, and why should it not be in law? Why should law be the only science to follow the trodden path of the past?

"Law is essentially the creation of the popular mind; it is founded on the common sense of the people. Although this is true, there is no reason why an efficient and thoroughly scientific method cannot be adopted in trial procedure for the purpose of establishing the truth, which is the object of evidence."

J. W. G.

The Movement for Legal Reform.—"The movement for legal reform continues to grow. From Illinois we hear a demand for a majority verdict of the jury. From Georgia there is a request that cases on appeal be decided without reference to technicalities. In Massachusetts they want shorter trials; in Colorado more courts; Oregon is discussing an amendment to its constitution providing for the manner of deciding causes in the appellate court, while California and Indiana are heard with the old complaint of the law's delay. But all these complaints, in some form or other, have been heard for a time sufficient for their permanent establishent as proper subjects, of concern and we presume, will be heard for the remainder of our natural lives, and probably thereafter. It is a fact, however, that many of the states are accomplishing wise and useful reform in legal procedure. Such reform is observed where the people have the habit of doing things as distinguished from intending to do them, and because they recognize an improvement when they see it, we expect other states will follow in the footsteps of the progressive ones—we mean legal progressiveness.

"In those states which complain of delay it is noticeable that the demand for speed is generally confined to the criminal courts, although to an observer living the simple life it appears that the delay which is injurious to the business of the country, and, consequently, to the people, is the delay in the disposition of civil actions rather than in criminal prosecutions. In nearly all, if not all, criminal courts a prisoner who is not out on bail must be tried at the next term of court after he is indicted, unless it appears that the interests of justice demand otherwise; and, if he is out on bail, he will be tried when his case is reached in its regular order, which, generally speaking, is quite promptly. In either case no real harm is done. It seems that our Bay State friends have hit it right when they say that criminal trials should be made shorter. But the great delay in civil causes has given trouble all over the country. It is nothing unusual to see from the records of our courts that cases have been pending anywhere from three to ten years. There seems to be no actual reason why things should be so, but they are. That this condition of

affairs should be remedied is without doubt, and that it will only be remedied when the members of the bar take it upon themselves to provide and insist upon a remedy seems to be equally clear.

"A few causes of complaint that we do not see mentioned, but which we think are worthy of attention, are the following: In the minor courts of some states the justice or magistrate presiding has to depend for his fees on the litigants. If he decides for the plaintiff, and the defendant is obliged to pay the costs before he can appeal, the magistrate gets his fees; if he decides for the defendant, and the plaintiff is not a person from whom the costs can be collected, the magistrate does not get his fees; and in those states it is common practice to pester individuals by attaching wages, issuing writs, and generally by putting defendants in such a plight that they must appeal, or pay something, or both, for the sole purpose of providing the magistrate or other minor officer with the wherewithal. Why not reform them? Then there is the contingent fee system. It seems that it should be reformed, and that, when reformed, counsel should be protected by the courts. The charging of contingent fees has not only been approved by practically all the states in the Union, but it is a necessity because of the fact that it provides the only means by which many persons can proceed in courts of law for the establishment of their rights. But at the present time, notwithstanding the right to enter into an agreement for a contingent fee, the lawyer is practically at the mercy of the parties to the action, and where, after action is brought, the spirit moves the defendant to settle, and the needy plaintiff to accept, the lawyer has had his trouble for his pay. This, of course, is not true in all states, and, as we see it, should not be true in any. Another matter which would not interfere with the rights of justice at all, and would probably be worth considering, is the necessity of reminding certain prosecuting officers that "it were better that ten guilty ones go free than that one innocent person should suffer."—*Law Notes,* January, 1911. J. W. G.

Popular Discontent With the Administration of the Criminal Law.—Hon. Frank J. Loesch in an address on the occasion of a banquet of the Illinois Bar Association on February 16 discussed, among other things, some of the causes for the popular discontent with the administration of justice in the United States. These causes, said Mr. Loesch, could be grouped under the following heads:

"First: The uncertainty of the law.

"Second: The break-down in the administration of the criminal law.

Third: Dissatisfaction with the law of master and servant.

"Fourth: Impatience of business men with the dilatoriness and expense of jury trials in civil cases and the adherence to rules of evidence out of keeping with modern systematic business methods.

"Fifth: The political power vested in our courts as one of the three coordinate branches of our federal and state governments respectively.

"Time forbids much elaboration of any of these criticisms.

"The development of the natural resources of the United States within the past quarter century, and the expansion of interstate and foreign trade and commerce has made business and professional man acutely sensible of the variety of modern statute laws upon many subjects recently coming within

the purview of legislatures and the uncertainty of all laws where dependence must be placed solely upon the common law.

"We have this morning had an illustration of how difficult it is for lawyers to agree upon even a few changes in procedure intended only to simplify and expedite the trial of causes to just the speedy results; hence the ever-growing difficulty confronting the lawyers and courts in their search for a remedy for existing evils of too much law."

Referring to the Gilbert practice act then pending before the legislature, Mr. Loesch said:

"We must consider the simplification of procedure, as well as the codification of substantive law, but no one man can do that, either for our state or for the nation. To put through at one session of the legislature a bill of ever 1,800 pages for recasting much of the law of the state, drafted by one man, skillful lawyer though he may be, without long and intelligent consideration and debate by judges, lawyers, publicist and business men, would be the very height of legal folly, would cause great needless expense, to litigants and the public, and would make legal confusion worse confounded.

"In this matter let us keep in mind that laws are slow growths and cannot be violently torn away from their foundations and substitutions made without injury. Let us keep in mind the caution of an able writer on civilization in Europe, when he says: 'In civilized life, society is ever under the imperious necessity of moving onward in legal forms, nor can such forms be avoided without the most serious disasters forthwith ensuing.

" 'To absolve communities too abruptly from the restraints of ancient ideas is not to give them liberty, but to throw them into political vagabondism, and hence it is that great statesmen will authorize and even compel observance, the essential significance of which has disappeared, and the intellectual basis of which has been undermined.'

"And let us take a lesson from what Germany did in framing its code put into force on January 1, 1900.

"A commission of able judges and lawyers was appointed in 1874—the work being distributed so that each member worked individually on the subject assigned to him. These men faced the most unique, as well as the most intolerable condition of private law that the world had ever seen. That work was pursued seven years.

"The commission met in 1881, and carried on its debates for six years. The drafts and arguments in support, consisting of six large volumes, were then submitted to the lawyers and the public at large for criticism and suggestion. That took three years.

"In 1890 the work was submitted to a new commission of twenty-one members, composed of jurists, economists, leading men of each of the political parties and representatives of commerce, industrial arts and agriculture.

"That commission worked over four years, and then submitted its draft to the governing powers, and ultimately the Reichstag, or parliament. After a general discussion it was sent to a new commission, which reported in less than five months and its work was adopted.

"The new code was promulgated on August 18, 1896, to that effect throughout the empire on January 1, 1900. This code is published in a single volume of less than 700 loosely printed pages in the translation.

"The difficulties are such that we can look for no immediate relief in codification. "If there can be said to be anywhere a break-down in the administration of the law, it is in the criminal courts. Those courts present the spectacular and dramatic side of the law and of life. They are the ever present source of sensational items for the newspapers. The disagreements of juries, the unexpected acquittals, the failures and delays in bringing notorious criminals to the bar, the long delays in securing a jury, in much discussed cases, and the banality of individual jurors, are the daily themes of executives, statesmen, jurists, and writers.

"It must be said that much of the criticism is well founded. Comparisons with other civilized countries show ours to be woefully ahead in crimes committed against the person, homicide especially, and woefully in the rear in punishing the criminal. "The heterogeneous population in our great centers, where the serious and disproportionate number of crimes are committed, require that the criminal laws shall be enforced with efficiency and certainty.

"That remedies must be found is certain. We cannot go on as we have been with increasing crimes and decreasing punishments." J. W. G.

Need of Reform in Texas Criminal Procedure.—Popular dissatisfaction with the administration of the criminal law continues to spread. Bar associations, civic organizations, religious associations, scientific bodies and the newspapers everywhere are joining in the protest against existing methods and suggesting remedies. Among the large number of newspaper editorials that come to our desk the following from the Austin, Texas, *Statesman* is significant.

"A revision of our criminal laws and court procedure is most desirable. Progressive reform in this direction is invited by conditions existent not only in Dallas county, but in other countries of the state. As we are assured by legal metaphysicians who have given close study to the matter, our substantive laws are, in the main, good; certainly more progressive, responsive and satisfactory than those of most of the states of the union, but our system of procedure is archaic, a 'ghastly remnant of common-law thought and method,' as it has been described; the last vestige of which was swept away by the 'intellectually self-reliant English simply and easily without acclaim' in their sweeping procedure changes in 1876. But they had a Dickens to remind them of their court frailties, and we, to date, have not.

"But what is the lawyer's share in the perfidy and alleged injustice that attended court trials and court decisions? Is not he somewhat to blame? Is not Old Technicality somewhat to blame? And are not the ethics of the legal profession, as a whole, somewhat to blame? The criminal must be protected in all his 'rights,' though justice be outraged. Technicality wills it so; precedent gives its consent, and the protecting folds of the judicial ermine cover all three in one sweeping embrace. Lawyers constitute a majority of the state government; they are in evidence in most of its departments. They constitute a majority of the legislature. Every class, every interest, every profession in the state looks to Austin for protection of its interests and to make 'trade' good in its line, and why not the lawyer?

"We elect lawyers, governors oftener than we elect business men or farmers. These lawyer governors put lawyers at the head of departments of the state government. They put them in charge of the state's agricultural inter-

ests, of its mining interests, of its educational institutions, and they invariably constitute a majority of the law-making power, and we are surprised to have a lawyer government in all its parts, and that our criminal laws and methods are defective in suppressing and punishing crime as it should be punished with the 'self-defense' plea worked to a frazzle that the criminal may escape just punishment for the deed committed.

"And yet *The Statesman* has no grievance to air against the lawyers as a distinct class. The great majority of them are good citizens and patriotic, who have the welfare of the state first in their affections, who give conscientious service to their clients and who would serve the state with equal fidelity were they called to this post of honor. It is not the lawyer, but the system that is at fault, and the thing to do is to reform the system." J. W. G.

Prof. Pound on Reform in Procedure.—In a letter published in a recent number of the *Central Law Journal* Prof. Roscue Pound makes the following observations on the subject of procedural reform:

"Recently a judge of one of the circuit courts of Illinois said soberly, in print, that 'Illinois has as fine a system of pleading as ever existed or as does exist today on the globe.' Perhaps the word 'fine' may need definition. But if he meant that Illinois pleading is as effective an instrument for the administration of justice as any that exists, such belief on the part of a judge argues a most unhappy ignorance of what the reports and books of practice disclose to any one who will read them.

"In a recent discussion before a bar association a justice of a state supreme court argued a satisfactory system in his own state from the number of cases the court 'disposed of' annually. When we look at the last volume of the reported decisions of that court, however, we find that twenty-four of the causes reported therein were so decided that they must be tried over again. In the volume in question, twenty-two new trials are granted in actions at law, one equity cause is sent back for further proceedings, and one suit in equity is dismissed after decree because the plaintiff should have proceeded at law. In the latter the plaintiff must now begin anew in the same court, must try the same cause once more to the same tribunal, on the same facts, but on new paper! In the twenty-two actions at law referred to three new trials of the whole cause are granted because of errors in the damages; three are granted because of the arguments of counsel; in one the diculty, as stated, is that a court of law may not reform a written instrument. But observe: In that state the same court has jurisdiction at law and in equity. Hence the difficulty is that another proceeding was required, and must now go on, in the same court, collateral to the proceeding in which the new trial was granted. In that proceeding the same facts will appear and the same result will be reached as in the proceedings set aside. Causes so decided are not 'disposed of.' Had the learned justice been familiar with the practice in more than one jurisdiction which has outgrown the stage of procedure represented by these causes, he might have felt less satisfaction.

"Above all things, there is need for more widespread knowledge of what has been done to modernize procedure. There should be more information as to what has been done and is doing to make procedure serve the ends of substantive law and of justice. Too much of our American discussion has been a *priori*. Too much assumes that knowledge of the local practice is a sufficient

qualification for fixed opinions. If you can excite interest in bench and bar in what has been achieved at home and abroad, and induce the profession to investigate what reforms in procedure have done and hence may do elsewhere, instead of harping forever on the monstrosity which over-minute legislation has produced in New York, you will have rendered a service." J. W. G.

Governor Gilchrist on the Law's Delays.—Governor A. W. Gilchrist of Florida gives a leading place in his last annual message to the legislature to a discussion of the causes and remedies for the law's delay. After reviewing the English practice and calling attention to the recommendations of the American Bar Association with regard to reversals for harmless errors, he goes on to say:

"Under our laws, if an attorney so desires, it is almost impossible to secure final judgment in less than seven or eight months from the date of the conviction. In case of a death sentence, all that is necessary is for the attorney to take exceptions. Exceptions being overruled, sixty to ninety days are allowed in which to prepare a bill of exceptions. At the end of such time no writ of error is sued out. The Governor issues the death warrant, returnable within a reasonable time, say, three or four weeks. Just before the date of execution a writ of error is sued out as a 'matter of right.' This writ is returnable to the supreme court at its next term, 'unless the first day of said next term shall be less than thirty days from the date of the writ, when it shall be returnable to a day in said next succeeding term, more than thirty days and not more than fifty days from the date of the writ.' Then the attorney-general has thirty days in which to make reply. Then the attorney for the defendant has twenty days. If the supreme court is ready to hear the case at once, it thus takes seven or eight months at the shortest time to hear any such case. Suppose the writ of error is taken out at the beginning of a term, returnable to the next term, six months distant. It thus appears that fully eleven or twelve months may be necessary in order to hear the case. In the event the case should be reversed on a point of law, by the time the case is tried again the witnesses who have testified as to facts have died or moved away or have forgotten. The facts in the case, as well as the law, are at issue in the next trial. Then, according to 'due process of law,' not on account of 'right and justice,' but for some error for which the attorney is responsible, another long-drawn-out trial is obtained, involving not only questions of fact, but questions of law. If a verdict of guilty is again obtained, it goes before the supreme court again.

Speaking of the attitude of the Supreme Court of Florida toward technicalities, he says: "I could get up enough data for a pretty good-sized book showing decisions by which 'due process of law' has run rough-shod over 'right and justice.' Among the cases cited by him in illustration are the two following:

"In *Mobley v. State,* 57 Fla. 22, defendant was convicted in the trial court of the larceny of a cow. The supreme court reversed the judgment of the lower court and awarded defendant a new trial on the ground that the information charged the defendant with stealing a *cow,* on a certain day, from H. T. Lykes, while the evidence introduced at the trial showed that the defendant, on the same day, stole a *steer* from the said Lykes. This was held by the supreme court to be a fatal variance between the allegations in the information and the proof on which the verdict of guilty was obtained. Had this steer proved to be a bull, there is no telling what effect it would have had upon determining the decision of the court.

"In *Hampton v. State,* 50 Fla. 55, the defendant was convicted of manslaughter in the lower court, and the judgment was reversed and a new trial ordered by the supreme court, the supreme court holding that the judge of the lower court erred in denying the motion of defendant to strike 'the testimony of state's witness, J. W. Evans, to the effect that his wife (the deceased) would have eaten breakfast on the morning of the fatal operation upon her had she not been prevented by one of the defendants, etc.' The supreme court also held that it was an error for the judge of the lower court to sustain objection by the state's counsel to the following questions propounded by defendant's counsel to state witness: 'Why did you do that? Was it because you thought my friend Simonton was incompetent?' the supreme court also holding as error the trial court's permitting certain questions to be asked on cross-examination by state's counsel; also holding as error certain charges given by the court below with respect to the right of the jury to discard evidence which they did not believe and charges of the lower court defining reasonable doubt."

J. W. G.

The Jury System.—The May number of *Case and Comment* is devoted especially to the jury system. John M. Steele, commissioner of jurors of Monroe County, New York, describes the jury commissioner system that has been in operation in that county for the past fourteen years.

"The definite object aimed at by the jury commission system," he says, "is to secure at a minimum cost competent and impartial jurors.

"Under the old system the supervisor, town clerk and assessors of each town and the supervisors in the city presented to the courts a list of persons from their town or ward, whom they certified as being qualified for the duties expected of them. Personal preference and political considerations oftentimes entered largely into the selection of such lists. But little discrimination was made, though men were oftentimes physically, mentally and morally unfit to sit as jurors. Of course much of this became manifest as soon as they were examined. But the summoning and excusing of so many incompetents alone cost the county thousands of dollars annually. Besides this same class of jurors came up year after year, and there was no means apparently of preventing it. It became evident that the matter ought to be placed in the hands of a commissioner of jurors, that he might select by careful inquiry men known for character, for intelligence, for merit and fitness, so that a panel for the trial of any case could always be had representing the general intelligence of the community and even better."

Robert A. Edgar of the Wisconsin bar contributes an article on "Proposed Reforms of the Jury System." In the first place there are too many exemptions from jury service, he says. It would be better to repeal all exemptions, except attorneys and court officers, and leave the court to excuse in case of extreme individual hardship. The selection of names for the jury list should not be made by the sheriff, but by an impartial commissioner or commissioners appointed by the judges and who should be empowered to summon and examine under oath prospective jurors touching their qualifications. Talesmen should not be called as jurors since it affords too good an opportunity for the jury fixer to get in his work and for the professional juror to be called. Concerning the practice of challenging jurors who have read newspaper accounts of the crime he says:

"There are but few men of intelligence, men competent to make good jurors, who, by reading of newspapers or otherwise, have not heard or read in advance of the trial something of the more important cases which come up before the courts; yet because of this knowledge they are the very ones who are most likely to be challenged for cause, and the jury box, in these more important cases which demand the highest intelligence, is likely to be filled by the more ignorant members of the community. A judge is not considered disqualified because he has heard of a case before, and a much more rigid rule should not be applied to a juror. A dishonest juror who is desirous of serving will deny all knowledge or opinion. A juror who has formed or even expressed an opinion based on newspaper reports or on rumors should not be disqualified if he states that he can lay aside such opinion and render a true verdict according to the law and the evidence, and the presiding judge is satisfied that such is the case."

Concerning the impotency of the American judge in the conduct of the trial he quotes Professor Thayer as saying:

"It is not too much to say of any period in all English history that it is impossible to conceive of trial by jury as existing there in a form which would withhold from the jury the assistance of the court in dealing with the facts. Trial by jury, in such a form as that, is not trial by jury in any historic sense of the words. It is not the venerated institution which attracted the praise of Blackstone and of our ancestors, but something novel, modern and must less to be respected." The true rule, he says, was stated by Mr. Justice Gray of the United States Supreme Court: "Trial by jury in the courts of the United States is a trial presided over by a judge, with authority not only to rule upon objections to evidence and to instruct the jury upon the law, but also, when in his judgment the due administration of justice requires it, to aid the jury by explaining and commenting upon the testimony, and even giving them his opinion upon questions of fact, provided only he submits those questions to their determination." This is the rule followed in the English courts and in the federal courts of this country.

The rule of the common law requiring a jury of the vicinage, he says, should be abolished in certain cases. The rule was adopted at a time when jurors were chosen because they had personal knowledge of the facts, but this practice has long ago passed away and jurors who know nothing of the circumstances of the crime are insisted upon. The ancient rule, moreover, was justified as a necessary means of protecting the accused against the arbitrary caprice of the crown, a safeguard no longer needed. The rule should be so far modified as to allow the trial judge in a criminal case in which it will probably be dicult to obtain impartial jurors, owing to the notoriety of the case to transfer it to some other county even against the objection of the defendant. The conditions under which the original rule came into existence are no longer applicable, but it remains simply because it is a fixed part of the law which the court cannot change and which no legislator has grappled with or had the courage to attempt to modify.

Joseph T. Winslow of the Massachusetts bar contributes an article entitled "Knowledge of Facts of Cause as Affecting the Competency of the Juror." After an examination of many decisions on the subject he states the following conclusions:

"A juror's hearsay knowledge of facts concerning the cause will not generally disqualify him from acting, although where he has conversed with the parties to the case or those connected with them, he has been excluded because of this fact.

"So, personal knowledge on the part of a juror of incidental facts, or those collateral to the material issues of the cause, or as to facts which he will not be called upon to decide, will not render him incompetent.

"But where he has such knowledge of material facts as tend to bias his opinion, he is held to be incompetent to sit in the trial of the cause, although he swears that he nevertheless stands unbiased. In the final analysis, the question of competency seems to rest in the sound discretion of the court, and if the inference is strong, or the presumption great that the knowledge on the part of the juror is such as will affect the verdict, a challenge for cause should be sustained."

Other articles in the same number are: "A Defense of the Jury," by Samuel Wolfe; "Indiscretions of a Juror," by John Macy, and "Art in the Selection of a Jury," by Francis L. Wellman. J. W. G.

Recent Criminal Legislation in Texas.—Within the last eight months three important laws have been passed in Texas, dealing with crime and the treatment of criminals. Two of these acts deal with the administration of the penitentiaries and the parole of convicts, while the third introduces the suspended sentence for first offenders. This latter act, which was approved by the governor on March 11, 1911, and will become effective in June, provides that the judge of the district court, the court having jurisdiction of felonies, may suspend the sentence of first offenders convicted of felonies, where the sentence is for a period not exceeding five years. Persons guilty of "murder, rape, perjury, burglary and burglary of a private residence, robbery, arson, seduction, bigamy and abortion" are excepted from the operation of the law. The fact that the accused is a first offender must be put in proof and must be submitted to the jury for a special verdict. The suspension of the sentence is within the discretion of the judge and he may require evidence as to the reputation of the accused as a law-abiding citizen. The refusal of the judge to suspend the sentence is not subject to review by the higher court, and when the sentence is suspended upon the application of the defendant he thereby waives his right to appeal. Upon failure to maintain good conduct; that is, upon conviction for a felony, or for a misdemeanor which the court thinks involves moral turpitude, the suspended sentence becomes operative and is cumulated with the sentence for the later offense. If the accused maintains good conduct for a period twice as long as the original sentence, he may come before the court and upon proper proof have the sentence finally set aside.

One of the measures concerning the prison management was adopted at a special session of the legislature last September, and became effective last January. It provided for a reorganization of the penitentiary system, placing the entire control in the hands of a board of three commissioners appointed by the governor for terms of two years. Six-year terms were desired, but a constitutional provision prevents a longer term than two years, but an amendment to the constitution is now pending, to be voted upon at the regular election in 1912. Provision is made in the law for the classification of the

convicts, for the abolition of the strap, or "bat," in all but the most vicious cases, and for the payment of the convicts at the rate of ten cents per day during good behavior, with a loss of twenty-five cents per day for every day of bad conduct. Convicts are declared to be competent to give testimony in cases involving breaches of discipline on the part of guards and other officials. In times past it has been almost impossible to convict a guard of beating or otherwise misusing convicts, for usually no witnesses were present other than the prisoners, who were not allowed to testify.

But the most important provision of this law is that which provides for the abolition of the so-called lease or contract system, by which the state hired out the men to be worked on plantations and railroads. The law provides that all outstanding contracts shall terminate on January 1, 1914, and directs the prison commission to purchase lands on state account and erect sufficient buildings to accommodate all the men as they are withdrawn from the contract forces. The state already owns nearly thirty thousand acres of rich valley land and utilizes the labor of about twenty-five hundred men on these plantations and within the walls at Rusk and Huntsville. Not a very large additional amount of land will be necessary to take care of the thousand men now working in the contract forces.

The regular session which adjourned in March passed what promises to be an efficient parole law, providing for the parole of first-term prisoners who have served the minimum term fixed by law for the offense. This measure replaces a law passed in 1905, which was never enforced. The new prison commissioners have adopted rules for the government of the board and a parole officer will be employed to look after the men while out on parole.

These laws are an expression of a growing demand for intelligent and efficient management of the state's penal machinery. Other reforms may be looked for along the line of improving the court procedure and the administration of justice.[1]

The Cry for Law Reform.—In an article in the *Yale Law Journal* for February, Robert C. Smith discusses the popular demand for law reform. Notwithstanding Goldwin Smith's saying that you might as well expect the tigers to clear the jungles of their hiding places, as to expect law reform from the lawyers, procedural reform, he says, must necessarily come from the lawyers.

"We are all agreed," he says, "that it is most desirable that a cause should be decided as soon as possible after it is instituted. Tardy justice is, in many cases, no justice at all. But before suggesting reforms, let us determine definitely the reason why there are such arrears in many courts. The ordinary delays in pleading and procedure are not a serious matter, but the business of the courts is frequently far in arrears. My belief is that one reason, if not the main reason, is of the simplest possible kind. The public expect the judges to do more than they reasonably can do. It is quite reasonable to lay down any rule as to the number of cases which ought to be heard and decided within any given time, nor can anyone but the judge himself determine how long he should deliberate upon any given case. If a judge be worthy to administer justice at all, may he not be trusted to devote his own time conscientiously

[1]Furnished by Prof. C. S. Potts of the University of Texas.

to the public service, and to press forward the business of the courts in which he presides, as rapidly as is consistent with safety? There should be no cheese-paring in connection with the administration of justice. The courts should have enough divisions and enough judges to efficiently discharge the business coming before them, and until this at least, is assured, there can be no satisfactory reform. There is unquestionably an advantage in being able to retain leading counsel. How this can be obviated, it is difficult to see. It would not be practicable to have a state advocate in every court to oversee trials and equalize the benefit of counsel, so to speak. The advantage which the affluent enjoy as regards counsel, though, is much more than offset by the slight *penchant* of the bench and the all-devouring prejudices of the jury, against corporations, and the representatives of money influence generally.

"Quite apart from the popular cry for law reform, which is neither prompted by definite knowledge nor controlled by appreciation of the difficulties in the way, there is the earnest desire in the profession itself that anomalies should be removed, and that the administration of justice should at least keep pace with the enlightenment and progress of the times. I believe the weight of opinion in the profession is that any systematic revision of the substantive law with a view to its reformation is undesirable and practically impossible, but that there is a wide field for reform in procedure, in the direction of simplicity and despatch and to some extent, economy. That procedure should be simplified requires no argument. The fullest powers of summary amendment should be vested in the courts, provided that no suitor should thereby be taken by surprise. That it should be possible for any cause to be disposed of upon technical grounds, without its merits having been determined, is a serious reflection upon our whole legal system. Delays must be shortened and costs reduced as far as possible. Let the subject, however, be approached with some sense of responsibility."

"Another prolific source of delays," he says, "is the number of appellate courts and the facility with which appeals are taken. Some of the intermediate appeals might with advantage be done away with and the delay in the hearing materially shortened." J. W. G.

Defects in the Administration of Justice.—In a recent address before the Kansas State Bar Association, Burr W. Jones, Esq., of the Madison, Wis., bar, pointed out some of the causes of the widespread dissatisfaction with our existing methods of administering the criminal law. In the first place, punishment of crime is frequently too long delayed. Too much time is spent in the selection of juries. Panels could be greatly dispatched by the abolition of the examination of jurors on their *voir dire*. It should be no disqualification that a juror has read the newspapers and formed an opinion upon hearsay, but it should be sufficient to qualify him if he is competent to render an impartial verdict. The privilege of taking changes of venue is another source of delay, as is also the wide latitude of appeal usually allowed. Mr. Jones records that several years ago he attended a murder trial in the courtroom of the old Bailey in London, and was greatly impressed by the promptness with which the case was disposed of. There were no long arguments upon questions of evidence, and no impassioned appeals to the sympathies of the jury. The judge reviewed the facts of the law at the conclusion of the trial, which was terminated within six hours after it was called. "In America such a trial," he says,

"would have consumed at least three days." The practice of reversing the decisions of the trial court upon technical errors is also a prolific source of delay, and not infrequently of miscarriages of justice. The doctrine of former jeopardy has injured a great many, and guilty scoundrels have often gone free. The fact is, he says, we are too much wedded to technicalities, which were proper enough centuries ago when the criminal code was barbarous in its severity, when the prisoner had no right to testify in his own behalf and when he had neither the right to counsel nor appeal. Those things have long ago passed away and with them all excuses for the technical that are now superstitiously respected. It is better, far better, he says, much as we deplore it, that now and then an innocent man should be convicted of murder than that our courts should be a by-word and a reproach.

Mr. Jones suggests the following changes in our methods of procedure: A restriction of continuances; the allowing of changes of venue only upon affidavit supported by proof; the denial of new trials, except where it is plain that there has not been a miscarriage of justice; the right of appeal on behalf of the state; the right of the state to take depositions; and the extension of the power of the judge, particularly in respect to restricting the examination of jurors on the *voir dire,* in limiting the cross-examination of witnesses and in respect to the right of commenting on questions of fact. J. W. G.

Criticism of the Courts.—Judge William A. Huneke, of the Superior Court of the state of Washington, in a recent address before the Bar Association of his state, dwelt upon the increasing tendency to criticize the courts because of their decisions. Among the principal reasons for which the courts are frequently criticized, he mentioned the law's delay as one of the least excusable. He admitted, however, that some of the criticism was justified. "It is true," he said, "that in many of our courts the time consumed is unnecessarily, if not flagrantly, long. These delays are not due to the fault of any single agency, but are the product of many. As a rule, too much time is permitted an adverse party to plead. Too many dilatory motions and pleas are permitted and too great strictness in pleading is required. Too much time is lost in taking testimony, in the impaneling of the jury, and in the examination of the witnesses. Another source of delay is the dilatory conduct of the attorney. Casualties are also the cause of many delays. Parties, witnesses or attorneys take sick or remove from the jurisdiction of the court. Judges, too, are sometimes to blame. Not infrequently, they hold cases under advisement too long. Sometimes they are too lax in the conduct of court business. However, it should be stated in justice to the courts, that as a rule the judges are habitually urging counsel and parties to hasten, as a result of which the judges incur the ill-will of both. J. W. G.

New Ideas in the Administration of Justice.—In an address before the State Bar Association of Kansas at its last annual meeting C. A. Smart, Esq., of the Ottawa (Kan.) bar, president of the association, argued for the policy of paying prisoners for their labor. "I am advised," he said, "that the penitentiary of this state during the last year shows a cash profit from the investment in that institution and the labor of its inmates. That profit ought not to go into the state treasury; it does not belong there. The profit of the labor of each prisoner should be kept separate, placed in a fund

and paid out toward the support of his wife and children, if he has such, so that when he emerges from the prison he may have the means to establish himself in some legitimate business. The state should never make a profit from its convicted citizens." He goes even further and argues that an innocent man who has been prosecuted and subjected to the expense and humiliation of a public trial should be indemnified by the state. If convicted and subsequently pardoned upon evidence showing that he was wrongfully convicted he should also be compensated for the ruin of his business and character.

Turning to the evils complained of in connection with the existing methods of judicial procedure he declared that the uncertainty which characterizes the administration of the law is one of the worst. The practice of leaving to the jury the determination of mental soundness of the defendant is also a prolific cause of miscarriage of justice. In a criminal case, when insanity is interposed as a defense, it is thus interposed too frequently, not because the defendant was really insane when he committed the act, but it is interposed as a pretext to get before the jury the proposition that the deceased ought to have been killed, and the jury rarely, if ever, pass upon the real question as to the defendant's mental condition. If they believe the deceased ought to have been killed they find the defendant insane; if not, they say he was sane.

"If I were to formulate an indictment against courts of last resort generally, I believe I would charge them in the first count of the indictment with permitting old and obsolete decisions to stand as authority long after they have been cut and marred and disfigured by subsequent decisions wherein they have been examined and distinguished. They are permitted to stand to worry bench and bar, when years before a portion of judicial dynamite should have been placed beneath them and they should have been blown from the field of our jurisprudence."

The criticism of the courts for sacrificing justice to technicalities, he thinks, is not usually well founded. Speaking of conditions in Kansas he says:

"With the exception of two or three counties in this state where legal business has become much congested by reasons over which the courts have no control, there is not a county in the state where a litigant may not have his case heard, if he desires it, at the first term of the court after his petition is filed. And, furthermore, in 95 per cent or more of the cases reaching the Supreme Court final decisions are rendered within thirty days after they are presented."

Frequently, he declares, the technicalities and delays complained of are not due to the courts, but to the legislature, or the constitution, which has tied the hands of the courts by practice acts or rules of procedure which leave the judges no discretion. He cites an example in which the conviction of a trial court was set aside because the bailiff was not sworn—a formality which was required by act of the legislature. Even the action of the Supreme Court of Missouri in reversing the decision of a trial court for the omission of the article "the" from the indictment may find support in the proposition that the Supreme Court merely obeyed the mandate of the constitution, which required indictments to conclude with the phrase "against the peace and dignity of the state." J. W. G.

Criticism of the Juvenile Court.—That the extreme and radical measures which are being incorporated in so-called "model" juvenile court laws by enthusiasts are preparing a serious problem for the people of this country, the significance and immensity of which is not apparent at the present time to either the laity or the legal profession, is asserted by T. D. Hurley of Chicago in an article which is being widely copied by the public press. The particular example considered is the Monroe County (N. Y.) Juvenile Court Act, which has been recommended as a model by the Russell Sage Foundation. Mr. Hurley's protest is significant, since he prepared the first juvenile court bill in Illinois in 1891 and is probably more familiar than any other one person with the whole juvenile court movement. There are many valuable features in the juvenile court acts which have been quite generally enacted in this country, as is everywhere recognized. These features are not, however, entirely new, as is sometimes thought, but rest on principles long recognized. What is new in these laws consists mainly in providing improved administrative machinery for the application by the court of established principles and recognized powers, such as the suspension of sentence. To go beyond this involves manifest dangers, and Mr. Hurley's warning is timely. He asserts that the following principles should be kept in mind in the framing of every juvenile court act:

"1—That the state is our servant and not our master.

"2—That 'the poorest man may, in his cottage, bid defiance to all the forces of the crown.' The state, in this country, cannot do what the King of England could not do except by due process of law.

"3—The parent is entitled to the control, custody and education of his child as against the whole world, and until he forfeits this right no power can interfere with him in its enjoyment.

"4—Before the state can interfere with parental rights and the child be made a ward of the state two things must be found: (1) That the child is neglected or delinquent within the provisions of the law, and (2) that the parent or legal guardian is incompetent or has neglected and failed to care and provide for the child that maintenance, training and education contemplated and required by both law and morals.

"5—The parent should be made a formal party to any proceeding where the custody of his child is at issue, and should be given a full and fair opportunity to be heard in the case.

"6—The proceedings should be conducted in the presence of the parents, their legal representatives and friends, court officers and others especially interested in juvenile cases.

"7—Both parents and children should be confronted with their accusers and be afforded the right to cross-examine the witnesses in the case.

"8—There is no room nor place in this country, nor should there be any room, for 'star chamber' sessions in any court, much less a juvenile court, where the status of a child is being fixed, possibly for life.

"The foregoing principles are well understood by not only the lawyer, but also by the layman. They meet with the hearty approval of all liberty-loving people. They require no authority to substantiate their validity. They are self-evident statements of the law that are based on common sense and justice. Any man or set of men or women who cannot endorse

the above principles of law are dangerous not only to the particular community, but a menace to the entire country."

In regard to the "model" juvenile court act Mr. Hurley says:

"Throughout the law the state is made supreme master over the child. The parent is only incidentally considered; he is not made a party to the proceedings, nor is he charged with neglect or inability to care for his child. The state is made to occupy the position of primary parent, with rights superior to that of the natural parent. This is a false and vicious position to take. There is no law or authority to substantiate this doctrine. The rights of the parent are superior to those of the state, and until the parent forfeits these rights the state cannot interfere with his control or custody of the child. Parental rights should not only be protected, but, as far as practicable, preserved." E. L.

Sir John MacDonell on Crime and Its Punishment.—Sir John MacDonell, in a recent address on "The Shifting Bases of Criminal Law," said that there was going on here and elsewhere a process of disintegration of some of the fundamental conceptions of that law, with the result of an uneasy feeling on the part of many who administer it that it is by no means what it ought to be; a sense of perplexity and failure, a turning to and fro in search of a way out of increasing difficulties; a conflict between the book law and that actually administered, and between the aims and methods of criminal law. The very criminals were beginning to have their "new horizons of criminal law." Some European countries—*e. g.,* Holland and Norway—had lately adopted new criminal codes. Austria, Germany and Switzerland had for some years been engaged in preparing new codes. We were doing piecemeal, but on an equal scale, what these countries were doing wholesale. That law is the confluence point of many novel ideas hostile to the established order. The solvent process had been accelerated by such works as "Les Miserables," "Resurrection," "Crime and Punishment," and Mr. Galsworthy's *Justice,* which has done for this generation what Godwin's "Political Justice" and such novels as "Caleb Williams" had done for an earlier generation. He drew attention to several changes affecting criminal law—*e. g.,* the widespread belief that many criminals, even if sane for some purposes, were too feeble-minded to be capable of controlling their conduct; the growing conviction that heredity and environment determined their character and that their character determined their crime; the regularity of criminal statistics, which begot a spirit of fatalism; the failure of prospective punishment to deter those who were accustomed to act upon impulses. He recalled the many admissions as to the failure of the prison to fulfil its object, from the heterogeneous elements collected there and the inability to impose punishments which would deter and yet not be physically or morally injurious. According to the teaching of modern criminologists, the sense of guilt was to disappear; and he quoted the saying of a recent writer: *Sin and guilt may live in the creations of poets; against scientific criticism it cannot stand.*

Describing the modern teaching, that not the crime but the criminal must be considered in apportioning punishment, he has pointed out that this must lead to uncertainty, which it had been the great object of early reformers to prevent. This doctrine must also subvert their teaching as to proportion between crimes and their punishment. To "individualize" punishment was to unequalize it for equal crimes. The lecturer further pointed out the bearing

of these doctrines on the law as to punishing attempts to commit crime. At present criminologists were in a dilemma. They wished both to reform the criminal and to protect society. But the more the criminal law is reformatory or educational, the less is it a deterrent; the more it is a deterrent the less is it educational. The desire to be humane might conflict with effective measures of reformation. Philanthropists, such as the late Mr. Charles Hopwood, pleaded for short sentences, but true reformatory treatment might require long ones. In this conflict between antagonistic aims and modes of treatment seemed at first sight to be the bankruptcy of criminal law as hitherto understood.

J. W. G.

Administration of the Criminal Law in Texas.—In Texas, as in many other states, there has been widespread complaint on account of the law's delay and the frequent miscarriage of justice. In the May (1910) number of the JOURNAL (p. 127), we quoted from an address of the president of the Texas Association of Prosecuting Attorneys, who described the methods by which criminals escape punishment in that state. Statitsics were quoted to show that only a small percentage of criminals were ever convicted, and that 51 per cent of the cases appealed were reversed by the Court of Appeals. The Democratic platform of Texas in 1906 contained a plank demanding simplification of procedure and reform of the jury system. The legislature enacted some legislation in obedience to the popular demand, but the more important reforms proposed were defeated. In his campaign for re-election in 1908 Governor Campbell advocated certain reforms in civil and criminal procedure, and again the state convention repeated its demand for such changes as would reduce the expense of litigation and secure a more speedy administration of justice. In his message to the legislature, January 12 of the present year, Governor Campbell reviewed his efforts to induce action on the part of the legislature and dwelt upon the crying need for reform. Among other things, he said:

"In my last message to the thirtieth legislature, in urging compliance with the platform demand that legislation simplifying the procedure in criminal trials should be enacted, I used the following language: 'The present complex and cumbersome procedure is a shield to the criminal, defeats justice, increases the number of our courts, and adds unnecessary burdens upon the taxpayers. Perplexing technicalities encourage crime, employ the time of the courts to no useful end, and the people pay the costs. A rigid enforcement of all the laws is essential to the social well-being, and is demanded as the only safe guarantee of life, liberty and property. To longer tolerate a system of technical obstacles behind which murderers and rogues may barricade themselves and defy the laws would be a reflection upon the wisdom, if not the sincerity, of our statesmanship. To say that crime can run rampant in Texas, and that our laws cannot be enforced, is to admit that we are incapable of self-government. That our law-abiding citizenship is growing impatient and restless at the law's delays and the uncertainty of punishment for crime cannot be denied. That there is just ground for such a discontent must be conceded. There is too much machinery in our criminal trials, too much literature, and too many refinements in the court's charge to the jury, and too many loopholes through which criminals may escape. When the court's charge in a crim-

inal case is heard, especially the charge in murder cases, the intelligent citizen is often made to wonder how any man is ever punished for crime. How is it possible for any juror, not trained in the law, to ever measure the guilt or innocence of an accused person by rules and distinctions not always understood by the courts themselves? Is it a surprise that juries disagree, that criminals go unwhipped of justice, that new trials are forced, cases reversed by the Appellate courts, and that mob spirit is rife in Texas? The judges are not at fault; the juries are not always to blame; the main difficulty is in the system. A fair and impartial trial, upon the law and the facts, without tangled and technical rules, should be accorded the accused, and when this is done, and not until then, a multiplicity of trials and delays can be avoided and substantial justice may with some reason be expected in all cases.'

"With respect to the procedure in civil trials I then said: 'As in criminal cases, probably more than one-half of the civil suits tried and appealed are reversed and remanded for new trials, and many new trials are granted by trial courts on account of errors in the court's charge to the jury. . . . It does seem to me that an earnest effort should be made to provide the relief demanded, and with that end in view I urgently recommend to the legislature the passage of the following laws:

"1. That jury exemptions be further limited, and that the causes for which the trial judge may, in the exercise of his discretion, grant excuses to jurors drawn for service be accurately defined and further limited.

"2. That the legislature either prescribes by statute a common-sense form of charge in every criminal case of the grade of felony or require such charge to embrace only the nature of the accusation, and a copy of the statutes applicable to the offense charged and the facts proven in the case. . . . As the statute now stands, when the case is tried, notwithstanding a matter may not have been called to the attention of the court, if upon an examination of the entire record after the trial, and in the office of learned counsel, a technical error is discovered, a new trial follows. This ought by all means to be changed, and, if changed, would result in a more certain enforcement of the law and in the affirmance of many cases which under the present rule are required to be reversed for errors usually technical and in no way affecting adversely the substantial rights of the defendant.

"4. A law should be enacted providing that no judgment should be reversed for an error which does not affect the substantial rights of the adverse party. This law should apply to both criminal and civil cases. This is not now the rule in many states of the Union.

"Every thoughtful man admits the necessity for legislative reform along the lines suggested and so often urged. The people and the press of the state are protesting against existing conditions and have the right to expect relief at the hands of your honorable bodies. The technicalities and high-sounding, ornate literary nonsense now obstructing the courts, encouraging crime, delaying civil and criminal trials and defeating justice should be swept away by some common-sense legislation. With this done, the number of courts could be reduced instead of increased, and criminals could be more speedily and certainly punished."

J. W. G.