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Notes on Current and Recent Events

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ANTHROPOLOGY—PSYCHOLOGY—MEDIO-LEGAL.

"The Concept of Penal Juridical Capacity."—Giovanni B. Mauro of the Royal University of Palermo contributes a long article to "Il Progresso del Diritto Criminale" on "The Concept of Penal Juridical Capacity," which throws some much needed light upon the theory that underlies punishment for crime. upon the theory that ought to underlie punishment, and consequently upon the persons that should be subjected to punishment and the treatment that should be given to breakers of the law.

He divides the subject into two parts: a discussion of the theory of penal law, and a detailed examination of the requisites of "penal juridical capacity," as he calls the state of an individual who, the law recognizes, may be subjected to punishment. He presents, in opposition to the view of punishment as a means of social defense brought about by psychological compulsion, the individualistic view of punishment now so much agitated and making such rapid strides in the criminological and the penological fields. Emphasis should be laid, he says, upon the subjective element of the crime; the individual's whole mental content should be known and examined with sympathy. All our law, all our treatment of that individual should hitch in with this mental content, made up of many complex factors.

Not all persons, then, ought to be treated alike. And the laws of civilized nations recognize, to a certain extent, this distinction. The man who is endowed with intelligence and with will is capable of conforming his conduct to the "objective" criminal law, capable of feeling the psychologic restraint of punishment and his penal obligations, and of fulfiling them. Such a one is endowed with penal juridical capacity, and is a proper subject for criminal law.

A distinction should be here made between capacity to have rights and to be under obligations, and the capacity to acquire rights by means of individual action, and to assume obligations in the same way. This distinction is recognized in civil law. For instance, a married woman, at common law, has certain rights and obligations, but she has no authority to enter into contracts without her husband's consent. So in criminal law certain classes of people have rights and are subject to obligations irrespective and exclusive of that part of "objective law" which requires the free and uncontrolled action of the intelligence and the will—the supremacy of the subjective state or law. The ability to act according to the objective law implies not only the negative attitude to shun the rigors of the penal law, but also the power to valuate and measure conduct—in relation to the morality of the State and in relation to the morality of the individual.

If, then, a being has no intelligence to understand and no will to act upon that understanding the penal law can have no application to him or it. We no longer share in some aberrations of other times in which the brute and even inanimate things were, under the canon law, proper subjects of punishment in so much as the administrators of the law believed that the souls of sinners entered and found lodging in them.

PENAL JURIDICAL CAPACITY

Man, to be the subject of penal law, must have certain requisites. He must have life, he must be of a determinate age, and he must be of sound mind. Life has the right under the law to be protected even when it is only a hope, a potentiality, a possibility, but the embryo has no power of action, nor has it understanding. It is not, hence, liable to punishment. But when life is conjoined with another element—a definite age—then the being becomes a fit object for the operation upon it of the penal law. Full penal responsibility under the Italian law is attained at the same age as full civil responsibility—at twenty-one years. But to reach this point of full penal responsibility four periods must be traversed. First, there is the period from birth to the ninth year. During this time the individual can, under no circumstances, commit crime. Children between the ages above mentioned, says Alimena, are not capable of feeling psychical restraint, because they have not yet any conception of their relations with others in society and of the consequences of their acts. The second period begins at nine and ends at fourteen. But responsibility is during this span dependent upon proof that the minor has acted with discernment. The question whether or not the prisoner at the bar has acted with discernment is a question for the jury. The third period of incomplete responsibility extends from fourteen to eighteen. This age, it is evident, does not in the great majority of cases imply complete ethical and intellectual development, nor does it involve that accumulation of experience and of cognitions upon which the normal power of volition and inhibition is based. So that the penal law is adapted to this state of development and the provisions of the Italian code are to some extent merciful in that they authorize the judge to commit to a school for education, correction and proper development, or to put upon parents the obligation of watching over the conduct of the juvenile delinquent and of providing for his education. The penalties are also lighter. The fourth and last period runs to the age of twenty-one. (Art. 56 of the Code.)

But just here do we meet a snag. We come to one of the grave problems that now disquiet the spirit of the Italian public. How shall we better treat these juvenile delinquents? Reform should proceed with less academic doctrinairism and with more practical consideration, founded upon principles of criminal policy. "There ought to be one long period of full lack of penal responsibility without the useless and barren investigations into discernment, which in practice are not made by our Italian magistrates, and which, maybe, could not properly be made even by expert psychologists. And our magistrates are, in general, anything but psychologists." It would be necessary in this long space to avoid the prison and the reformatory. If the imprisonment brings the inmates together harmful contacts and the worst products result. If the imprisonment be accompanied by cell isolation, then education in social life, to which the inmate must finally return, is made impossible. The reformatory has not only many of the defects of the prison, but has the added weakness of creating "regimental education," when what is necessary is "family education." This family education, similar in almost all respects to that given in the home, should consist of moral and religious branches. A writer who cannot be accused of clerical leanings is strongly in favor of religious instruction, because, says he, the sanctions in that case are more compelling than those in the case of morality. The sanctions of morality are too subtle, too

difficult of comprehension for the immature mind. This mind recognizes only two forces and bends to them alone: the authority of a superior individual and the authority of a Supreme Being. The judges of these Juvenile Courts should be fathers of families and spotless citizens. And they should not be cribbed, cabined and confined by formal procedure or academic disquisitions.

Sex should be a modifying cause in penal law, since the male behaves in a different way in the face of positive or objective law, and of subjective, physiologic and psychologic law from the female. Women everywhere commit fewer crimes than men, although the proportion of crimes consummated by them is higher in those countries where women have entered public life. There are certain crimes that are peculiarly feminine, such as adultery, incest, infanticide. abortion. [I cannot see how the first two are any more peculiar to women than they are to men. Their commission requires two individuals, each of whom, upon the commission of the act prohibited by law, becomes guilty with the other. Infanticide and abortion may, in the sense that only women, because of the nature of the crimes, *can* commit them, be considered special to them.] Besides these crimes we find almost always as the effect of hysteria or moral insanity such endemic crimes as defamation and false pretense, and going higher, murder, which at one time was committed by vinous substances, then later by vitriol, and today by the revolver. The law should suit itself to human nature when this is fundamental, physiologically or psychically. It should not endeavor in these extreme cases to put human action within a straitjacket. If it so attempts to do, human nature will go on being human nature and law will continue to deserve the disgrace and the shame cast upon it. The judge should consider, in the case of crimes done by women, the condition of the prisoner at the moment of the crime. Hearts that are filled with the milk of human kindness swell up top-full with the gall of direst cruelty. Women are subject to loss of mental balance in times of menstruation, of pregnancy, of the puerperal state and of nursing at the breast. Doctors seem to be agreed upon the terrible and cataclysmic changes that these periods give birth to.

Insanity may be of two kinds, aberration of the intellect or aberration of the will. But in Italy, as elsewhere, responsibile criminals, especially pimps, have played and speculated with the leniency of the law, and wrought havoc upon it.

The writer of this note believes that the law upon insanity should be made milder and more humane, but proper safeguards should be thrown around the administration of it. No pimp who has lived upon the swiftly crumbling tenement of clay, of an innocent girl, and who has ruined the house at one fell blow, shall be suffered to intrench upon the domain of life and of law held sacred to the really irresponsible. Dwellers in cities feel strongly upon this point. Prostitution is rampant, and the villainous men who are responsible for a very, very large part of it strut their peacock way along the public thoroughfares and are the arbiters of the lives and fortunes of honorable people who have not the political and even the social influence that comes with financial prosperity, such as these procurers, hawks and falcons revel in. If they contravene the law they escape. For one reason, or another, or for all of them —insanity, technicality, obstructive measures, political influences—they come out scatheless, if, indeed, they get into the mesh of law at all. While I am

upon this subject let me say that I believe the scale of punishments ought to be reconstructed. Some thought ought to be devoted to the weighing of crimes. Our scale is an old scale, for the most part, adapted to other times. It is repugnant to our moral sense to see upon our statute books the law that the stealing of a pin is punishable by imprisonment for a year, the larceny in the day time of property worth over twenty-five dollars punishable by imprisonment for five or ten years. And then side by side with these the law concerning procurers and white-slave traffickers. The unspeakable crime of stealing a pure human being and selling it to all comers fifty and a hundred times a day, the unnameable crime of crushing the spirit and ruining the immaculate soul of a fresh, blooming, sacred girl is punishable—think of it—by a fine of one thousand dollars! Why, these human vultures can get ten thousand—one hundred thousand dollars in an instant. R. F.

"The Sexual Root of Kleptomania."—The "Science" of Criminal Anthropology is so new, comparatively speaking, that extreme views of the relation of disease to crime is not surprising. Few extremists, however, go so far as does Stekel, as set forth in the able review of his paper on "The Sexual Root of Kleptomania," which appeared in the *Journal of Criminal Law and Criminology* for July, 1911.

To my mind, Stekel's views are replete with fallacies. The quotations which he makes from Bontemps and Laseque in support of his theories are absurd. Of the women thieves who afflict large department stores, very few are true kleptomaniacs. The fact that a woman thief is well-to-do, or at least has no necessity for stealing, proves nothing when taken alone. Too often the fact that the woman is the last person in the world who would be suspected of being a thief is used to protect one who is naturally predatory and for whom the excuse of kleptomania is ridiculous. The uselessness of the articles stolen is by no means proof of kleptomania. The opportunity to steal being favorable, all is grist that comes to the mill of the woman thief. She is as impractical in this as many honest women are in other matters. The time-honored story of the woman who bought a bushel of pepper boxes "because they were cheap" is pat in this connection.

False kleptomania feeds on opportunity. Several years ago the electric lights suddenly went out in the loop district of Chicago. During the half hour or so of darkness that followed, many thousands of dollars' worth of stuff was stolen from the large stores within the loop—not by kleptomaniacs, not by professional shoplifters, but by "normal" persons who were temporarily thrown off their moral balance by opportunity. Danger of detection would effectually have checked the "uncontrollable impulse" in most cases. Were the women among these persons dominated by sex symbolism or sexual impulse?

Stekel lays great stress on the character of the articles stolen as "sexually symbolic." It is a matter of common observation that there is usually no particular method in the madness of the true kleptomaniac. All's fish that comes to the kleptomaniac's net.

There are, to be sure, cases of sexual perversion in which the articles stolen are sexually symbolic, e. g., where the subject steals articles of apparel belonging to the opposite sex. Such cases, however, should not be classed

as true kleptomania, but as sexual perversion. The desire for sexual gratification is paramount—the selection of the articles stolen is methodic, and in the absence of objects that are sexually suggestive there is no impulse to steal. The slyness of the theft, it would appear, revolves, not around the sexual symbolism of a thing "forbidden," but around the consciousness that the achievement of sexual gratification through the acquirement of objects which are "sexually symbolic" is attended by penalties for theft if the subject is caught.

Apropos of the sexual suggestiveness of certain objects stolen by perverts, it is well to remember that sex symbolism pervades the psychology of normal human beings and contributes largely to the lust of the special senses, as illustrated by the sexually excitant or repellant effect of perfumes, personal odors, certain voice qualities and different articles of wearing apparel.

Criminality and sexual aberrations are intimately associated, it is true, but Stekel seems to me to be too sweeping and very illogical in his deductions. The criminal sexual pervert is a neuro-psychic degenerate, and both his sexual vagaries and his tendency to theft are due to the common cause of degeneracy. The prevalence of sexual perversion in morality among our prison population is no evidence that such sexual abnormalities are the cause of crime in general. Neither is sex symbolism to be fairly taken as the cause of kleptomania. Sexual perversion may lead to crime, but usually to crimes of a sexual, or sexually symbolic character, although, as I have stated, it may lead to thefts which cannot justly be termed kleptomania, and which psychically are the correlatives of sexual assaults or other varieties of true sexual crime.

Reverting to the subject of stealing by the female, it is well to remember the feeble appreciation of property rights by the sex in general. Quite a proportion of women are much like children and savages in this respect, and appropriate anything which strikes their fancy and that without rhyme or reason. No instinct is more universal and more primitive. The phenomenon is purely reversionary, and as a rule is no more sexually symbolic than the thefts of useless articles by the dog, the crow or the magpie.

G. Frank Lydston, M. D. University of Illinois (Chicago).

Die Abtreibung der Leibesfrucht vom Standpunkt der lex ferenda.—This work, by Justizrat Dr. Horch und Prof. Dr. Otto von Franqué (Karl Marhold. Halle a. S. 1910), appears in the excellent collection of "Juristisch-psychiatrische Grenzfragen" and on its 71 pages carries us at once into the midst of this difficult subject. Dr. Horch deals with the juristic and historical, Prof. von Franqué with the medical phase of the problem. Any one who lacks the time to read the standard work, "Uber die kriminelle Fruchtabtreibung." by Eduard von Liszt, can familiarize himself with the subject in this little book. Particularly valuable is the short but most carefully selected bibliography at the end.

A. A.

On Dr. McDonald's Estimate of Gallagher.—In the November, 1911, number of the *Journal of Criminal Law and Criminology*, an article by Dr. McDonald concludes, with reference to the would-be assassin of Mayor Gaynor, "that there is no doubt that the cause of the shooting was the loss of his position and the resulting fear of poverty or of want of food." He also concludes, or

assumes, from what evidence it is very hard to see, that he was what may be called a "potential assassin," "that criminality was within him."

Quite the contrary. The poor chap was a sick man. He was suffering from general paresis. He did not know what he was doing. He had a vague, indefinite, crazy notion that he was being imposed upon. His act was the act of a sick man with no more "potential criminality" about him than there is about everybody in the community.

SMITH ELY JELLIFFE, M. D., New York.

Form and Changes in Blood.—The variations in the shape and color of blood stains, writes Wilhelm Polzer (*Archiv für Kriminal-Anthropologie und Kriminalistik,* XLIV, 1911, 326-329), depend upon their age and upon the nature of the substance upon which the blood has fallen. A blood stain retains its original shape on absorbent substances, as hard wood, polished metals, stones, glazed tiles, cement, asphalt, leather and writing, printing and wrapping paper, both smooth and rough. On non-absorbent materials the blood either forms a sticky mass, adherent to the surface, or it becomes brittle and readily scales off. On porous substances the stain spreads quickly in all directions, or is sucked in, as in sand, sawdust and cotton.

The shape is also modified by other conditions, e. g., spherical drops with regular outlines are formed when there is no wind, while the blood stains are "bottle shaped" when it is windy, or when the blood has fallen from a body in motion. A large round stain with deeply indented circumference indicates that the blood has fallen from a height.

The color from deep red or light brown to dark brown or blackish, as on polished hardwood. The lightest stain is seen on glass and soft wood. It is well known that artificial light should always be used when examining for blood stains, as it brings out some stains invisible by daylight. Hair is matted together in characteristic bundles, but no coloring matter can be detected by the naked eye. Similarly, leather always retains an almost imperceptible stain after the blood has been scraped off, which can only be recognized by an expert. Wall paper with a gilt design presents the greatest difficulty, owing to the fact that the copper contained in the gilt mixture enters into combination with the blood to form a greenish compound, which has no resemblance to blood. SMITH ELY JELLIFFE.

COURTS—LAWS—PROCEDURE.

Admissibility of Confession.—*People, etc., v. Borello,* California Decisions, Vol. 42, Page 664.—This case has attracted a large amount of attention in the public press, which, as is so often the case in legal matters, when reviewed by the laity, assumes that some new proposition has been decided by the court, because the writers have never heard of the doctrine before.

The opinion in this case holds that a confession is not admissible where it has been obtained under fraud or duress by the officers having the party in custody. This proposition has been decided innumerable times in the lower courts and frequently by the higher courts when such case has reached them. The reasons of the rule are manifest. The person under arrest does not have the free opportunity to express the truth, but is, in fact, driven to a declaration in accordance with the wishes of the officers and under the influence of the

fright and terror incident to his arrest. The use of the method known as the "Third Degree" is not unnatural, because the officers in their zeal and desire to secure the conviction of a person arrested are very apt to resort to it. The evil of accepting evidence procured in this way is entirely inconsistent with the theory of the common law, which carries with it the fair treatment of every defendant and the giving to him of the benefit of every reasonable doubt. If such confessions were admissible we would have a system even more unfair to the defendant than that of the French courts, in which the judge on the trial of the case practically administers the "Third Degree" by a course of questioning of the prisoner, accompanied by his own statement of the facts which he intends to elicit. This course of practice is, of course, immeasurably aggravated under the circumstances, when the arresting officer, holding his prisoner in jail and subject to his threats and persuasions, without the presence or aid of his friends, is subjected to violent language, threats and abuse.

HON. J. W. MCKINLEY, Los Angeles.

The Person Bribed in California Is an Accomplice.—*People v. Coffey.*—Another very important case just decided by the Supreme Court of the State of California is that of *People v. M. W. Coffey*, California Decisions, Vol. 42, Page 712.

The point decided in this case is not a new one, but it has been the subject of great controversy in the State of California, and varying decisions by different judges in the lower courts and the authorities in other states are also in conflict upon the subject. The Supreme Court of California in this case holds that the person bribed is an accomplice of the person giving the bribe and supports that view by discussion of the proposition and of the definition of the word "accomplice" in a very logical opinion.

The court points out the fact that the Code of California especially provides that "A conviction cannot be had on the testimony of an accomplice, unless he is corroborated by other evidence which in itself, and without the aid of the accomplice, tends to connect the defendant with the commission of the offense, and corroboration is not sufficient if it merely shows the commission of the offense or the circumstances thereof." (Penal Code, Section 1111.)

Under this provision the only remaining question incidental to the determination of the point is as to the definition of the word "accomplice."

In discussing this matter the opinion quotes the common law definition of an accomplice as including all who "receive, relieve, comfort or assist the felon" and points out the fact that "although the legislature did not in terms define an accomplice, it did lay down certain rules from which an acceptable definition of an accomplice may readily be derived" and obliterated the distinctions between principals in their different degrees and accomplices, and declared that "all persons concerned in the commission of a crime, whether it be a felony or a misdemeanor, and whether they directly commit the act, or aid or abet its commission, or not then present have advised or encouraged its commission . . . are principals in any crime so committed." (Penal Code, Section 31.)

Under the definition above given and rules laid down by the Code of California with reference to principals and accomplices, it seems to be perfectly clear that the conclusion reached by the court is correct, and if the result

is unfortunate that it is in consequence of the law and not of a misinterpretation.

Both of the above cases cling to the doctrine of common law involved as a result of the early treatment of defendants and the later desire to throw safeguards around them, protecting them first from torture and afterwards from such treatment as made the name of Jeffries infamous.

In doing this our law seems to have gone to an extreme which might properly be modified in the interests of society at large, even if it may possibly do injustice to the individual. The theory under which a man charged with crime cannot be examined by the prosecution and his failure to testify cannot be commented on has no justification in reason. It was right that he should not be submitted to torture for the purpose of requiring him to give evidence, but the law ought to be modified so that a defendant can be called and examined and that his refusal to testify when so called should be considered by the jury as tending to show his guilt. The statutory provision that a defendant cannot be convicted upon the uncorroborated testimony of an accomplice should be modified, because if the testimony of an accomplice and the testimony of the defendant himself, who should be examined, establishes his guilt beyond a reasonable doubt, then he ought to be convicted and punished for the offense which he has committed. J. W. McKINLEY.

An Italian Decision is a Case of Self-Defense.— *Il Progresso Del Diritto Criminale* in its issue of November-December, 1911, includes a very interesting review of a decision on the subject of self-defense. A challenged B to a duel in the presence of a number of people. B accepted, and the two principals withdrew from the crowd. C, however, a friend of B, followed them and in attempting to defend B wounded A. Upon being tried for assault and battery his plea was self-defense under the code. The court held that the plea was bad, because it could only be used by a man who was attacked without connivance of his own, or who went to the aid of a third party so attacked. C, therefore, had gone to the defense of B, who had willingly exposed himself to danger and, therefore, C could have availed himself of this plea only if he had supposed B to be unjustly attacked by A—an untenable theory in the case at bar. JOHN LISLE, Philadelphia.

A Bill Providing for the Redress of Persons Convicted of a Felony and Committed to the State Prison, Who Shall Subsequently Have Their Innocence Fully Established.—Be it enacted by the Senate and General Assembly of the state of New Jersey.

1. * * * All persons convicted of a felony, and forthwith committed to the State Prison, who shall subsequently establish their innocence to the satisfaction of the Court of Pardons, are hereby entitled to redress for damages from the county in which they were convicted, at the rate of one dollar ($1) per day for the total number of days confined in the State Prison; and further redress for damages shall be paid by the state to such person, in the sum of ($1,000) one thousand dollars as a bonus to the stipulated daily sum paid by the respective county; provided, that where a person is known to have been previously convicted of a felony, the amount of said redress, as damages, shall be one-half of the sum hereinbefore stated, paid by the county and state.

2. * * * Where an innocent person is sentenced to die, and such a sentence is executed by the state, redress shall be paid to the wife, husband or family of such person, in the sum of five thousand dollars ($5,000); two thousand five hundred dollars ($2,500) of which sum shall be paid by the county in which trial and conviction of such person took place, and two thousand five hundred dollars ($2,500) of said sum shall be paid by the State.

3. * * * In all cases where the death penalty has been imposed, and the condemned person subsequently establishes his innocence in the manner hereinbefore prescribed, redress for damages shall be paid to such a person in the sum and manner provided for in section one of this act.

4. * * * All decisions in such cases, by the Court of Pardons, coming within the terms of this act, shall contain the words:

"Released from custody on account of established innocence." (Bill drafted by George O. Osborne, Warden of N. J. State Prison, Jan., 1912.)

My reasons for preparing the bill, providing for the redress of persons convicted of a felony and committed to the State Prison, who shall subsequently have their innocence fully established, are as follows:

I know of no measure more potent to secure to every person the inherent constitutional rights to be considered "innocent" until proven "guilty" than the enactment of a law similar to the one I have outlined. The injustice of depriving an innocent man of his liberty for a number of years, together with the temporary disgrace to himself and family, without some equitable measure of redress, needs no argument to magnify it.

The practice of influencing juries, on the part of public prosecutors, by rhetorical display and reference to the past life of a man who is on trial for a specific offense has too long been tolerated. When judge and prosecutor realize that conviction on faulty evidence will result in expense to the county and state and reflexly cause them to be called to account by the Governor for lack of judgment, or for neglect, which in turn may cause them not to be considered for reappointment, man's protection from false imprisonment will be practically assured. Under the conditions existing no man feels that sense of security.

GEO. O. OSBORNE, Trenton, N. J.

Procuring Admission to the Bar by Fraud.—The following is the text of a letter from C. B. Bird, Esq., of Wausau, Wisconsin, addressed to the editor of *Law Notes* and published in the November issue of that journal:

"After reading your editorials in the October number as to admission to the bar, the following facts in *In re Mars,* tried at this city (the undersigned having been appointed special prosecutor to prosecute the disbarment proceedings), may be of interest. Under our statute, when charges are preferred they are presented to the judge of an adjoining circuit, who appoints a prosecutor to prosecute, and in the instant case one of the charges was fraudulently securing the certificate of admission. The case was tried and decided last June, and the situation on this point is shown by the finding of fact and conclusion of law made by the court, as follows:

(*Finding of Fact.*)

"The defendant took the state bar examination and failed in the year 1895, and also 1896, whereupon, in order to avoid the delay and uncertainty

attendant upon taking the next examination to gain his admission, and for the sole purpose of gaining admission to the bar of Wisconsin through an admission in another state, this defendant some time in December, 1896, went to the state of Florida, taking with him letters of recommendation from lawyers and judges of Ashland as to his moral standing and legal capacity. By means of these and an examination conducted by an examining committee, this defendant was, on the 13th day of January, A. D. 1897, admitted by the Circuit Court for Escambia County, Florida, to practice as an attorney at law in the courts of Florida other than the Supreme Court. The Florida statutes at that time contained no specific provision either permitting or prohibiting non-residents being so admitted, and no construction of that statute on this point has been shown.

"On January 14 the defendant applied to one of the justices of the Supreme Court of Florida for admission, took the oath of office before the clerk on that day (the said court not being in session), and at the next session of court, on January 19, 1897, pursuant to such oath so taken, was admitted to practice in the Supreme Court of the State of Florida. At the time of such admission the defendant was in the city of Ashland, having left Florida immediately after taking his said oath of office, with no intention of returning. The defendant had no intention of becoming a resident of the State of Florida or of changing his residence from the county of Ashland.

"On the 25th day of January, 1897, the said defendant applied to the Circuit Court for Ashland County for admission to the bar of Wisconsin upon said certificate from the Supreme Court of Florida, and upon the same was admitted to practice.

"I find the defendant not lawfully entitled to admission upon such certificate, since the procedure by which it was obtained was in circumvention of the true intent and meaning of the statutes of Wisconsin, which were never intended to authorize a resident of this state to remove temporarily to another state without changing his residence, there be admitted, and immediately return to Wisconsin and be admitted here upon the certificate there obtained, when he would not otherwise be admitted in this state to so practice. But I further find that the order of the Circuit Court of Ashland County, so admitting him, has determined this matter in favor of the defendant, which decision is conclusive."

(Conclusion of Law.)

"I conclude that the defendant's license to practice law was not lawfully issued upon the facts as they now appear, but that the issuance of same is a binding adjudication upon such facts, and except for the other facts herein found the defendant is the lawful holder thereof and entitled to practice thereunder."

The defendant was disbarred on other grounds, but this situation and decision may be of interest as showing one possibility which exists under lax statutes and procedure. C. B. BIRD, Wausau, Wis.

May Courts Recognize Economic Laws?—A recent decision of the Wisconsin Supreme Court, affirming the constitutionality of a workmen's compensation act, is declared by a very respectable economic authority to be "the most notable decision ever handed down by an American court." The notable

fact about this decision is that it takes distinct cognizance of sound economic principles, and declares that, in the absence of express constitutional words to the contrary, such principles must be regarded as a part of the Constitution.

The point is that mere vague and general language in the Constitution, or theories "drawn from the four corners of the instrument," however strongly fortified by precedent, must not be allowed to contradict the demands of modern economic conditions or permitted to stay the march of civilization.

In the text of this epoch-making Wisconsin decision, Chief Justice Winslow writes these memorable words: "When an eighteenth century constitution forms the charter of liberty for a twentieth century government, must its general provisions be construed and interpreted by eighteenth century mind surrounded by eighteenth century conditions and ideals? Certainly not. This were to command the race to halt in its progress—to stretch the state upon a veritable bed of Procrustes."

Commenting upon a recent decision of precisely opposite tenor, made by the highest court in New York state, the Supreme Court of Kansas said: "With the utmost respect to the very learned Court of Appeals of New York, it is submitted that such rulings simply fritter away serious efforts on the part of the Legislature."

Thus in Kansas and Wisconsin it is made plain that high courts of law are awaking to a great truth—a truth so great and imperative that it cannot much longer be obscured in any quarter, to wit: That an advancing civilization has its own intrinsic and self-vindicating laws, laws written in the nature of man and in the nature of things, and that these laws, being a part of the constitution of the universe, cannot with impunity be excluded from the constitutions of free states. R. H. G.

A Lesson from Massachusetts.—The *Chicago Tribune* of December 30th comments editorially upon a good law which stands upon the Massachusetts books and has recently been upheld by the Federal Supreme Court. The law provides that no man may assign his wages without the consent of his wife. This law is a body-blow to the loan shark. The *Tribune* suggests that the next legislature in Illinois must not adjourn without passing a similar law in this state. There is no shadow of excuse for the blood-sucking usurer who preys upon the weak, the sick and the ignorant, waiting to fatten himself whenever accident or mistake trips for a moment those who are traveling close to the edge of misfortune. R. H. G.

Old Laws Bar a Handwriting Test.—Miss Harriet DeWitt of Easton, Pa., who was placed on trial before Judge McPherson, in the United States District Court recently, charged with sending unsigned scurrilous letters through the mails to the Rev. Elmer E. Snyder and others, was declared not guilty. The trial came to a sudden and unlooked-for end when, under an ancient and obsolete law, evidence on which the prosecution based its case was ruled out.

And the dramatic part of it was that in ruling out the evidence Judge McPherson took occasion to denounce the law and declared that the evidence was such that it should be admitted. He saw no reason why Congress should compel the United States courts to operate in criminal cases under the laws of 1789, and then gave binding instructions to the jury. The government, upon the refusal of its evidence, had abandoned the case.

This is the famous "Poison Pen" case which some time ago startled the country. Mr. Snyder had been assigned the pastorate of Christ Lutheran Church of Easton. He was unmarried and popular. For years he and his friends were bombarded by anonymous letters, often of a vicious character, and eventually Miss DeWitt was arraigned on the charge of sending them. A direct bill was returned and she was ordered for trial in the United States District Court in Philadelphia. When Assistant District Attorney John Swartley offered in evidence a specimen of Miss DeWitt's handwriting which had been obtained by Postal Inspector Shoenberger, the case was brought to a sudden and startling end. It was brought out that the courts of the United States were compelled to work in criminal cases of this character under the laws of more than 100 years ago, adopted from England and which may date back to Alfred the Great. Mr. Swartley earnestly plead for the admission of the evidence, in reply to which Judge McPherson said:

"You have made an excellent argument, Mr. Swartley, but I am compelled to rule the document out. *In criminal cases, the United States courts are working under laws passed more than a century ago, the origin of which dates so far back that the reason for them must have long since disappeared. Personally, I believe that the evidence should be admitted. Under the state law it would be. I have absolutely no sympathy with the ruling, but I am bound by it until Congress sees fit to make a change.*"

The prosecution was abandoned and the jury returned a verdict of not guilty.

It is said that both bench and bar will endeavor to interest Congressman Reuben Moon of the Committee on Laws of Congress to have the present law repealed and something more modern substituted. In a state or county court the evidence would be admissible. A. S. OSBORN, New York.

A Bill to Regulate Procedure in United States Courts in Certain Cases.—The following bill, known as H. R. 31,165, was introduced into the last Congress by Representative Moon of Pennsylvania. It passed the House but failed in the Senate and has been reintroduced by Mr. Moon:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That no judgment shall be set aside or reversed or new trial granted by any court of the United States in any case, civil or criminal, on the ground of misdirection of the jury or the improper admission or rejection of evidence, or for error as to any matter of pleading or procedure, unless, in the opinion of the court to which application is made, after an examination of the entire cause, it shall appear that the error complained of has injuriously affected the substantial rights of the parties. The trial judge may in any case submit to the jury the issues of fact arising upon the pleadings, reserving any question of law arising in the case for subsequent argument and decision, and he and any court to which the case shall thereafter be taken on writ of error shall have the power to direct judgment to be entered either upon the verdict or upon the point reserved, if conclusive, as its judgment upon such point reserved may require. M. J. WESSEL, Providence, R. I.

Canadian Justice More Speedy and Certain Than American.—In a strikingly interesting address delivered at a recent session of the New York State Bar Association, Mr. Justice Riddle of the Court of King's Bench of On-

tario described the success of Canadian efforts to attain concrete justice "no matter if," as the learned justice put it, "the record does get a shock now and then." The ultimate object in legal procedure, it was shown, should be the attainment of substantial equity and justice, and not the exaltation of technicalities or the apotheosis of quibblings.

After describing the relations of the various courts under the Canadian system, he said, according to the report in the *New York Times* of January 21, 1912: "As for trials, we have the jury system, the same as you. But I don't think we're quite so—I shall not say 'crazy,' for that's offensive to lawyers—we're not so wedded to that form as you are. Libel, slander, malicious persecution, false arrest, and such cases come up mostly for jury trial. But equitable actions are usually tried by the judge alone, unless he directs that the case be tried by jury. Outside of these cases I have mentioned, every issue may be tried by a judge if he sees fit. If either party desires a jury trial, it can serve notice of that desire, but it remains with the judge even then to say whether he will turn the case over to a jury or try it himself; he is absolute master there, and there is no appeal from his decision to try the case. And in most instances the judge does try the cases, except accident cases. And let me add we are trying fewer and fewer jury cases every day in Ontario.

"Counsel sometimes skirmish for judges, and often ask for postponement of their cases—even as I suppose they may do here—on the ground of 'necessary material judges.' But when they do that very often they find that very judge whom they have been so anxious to avoid sitting up there and smiling at them, ready to hear their case.

"If a judge, however, has refused evidence improperly in a case, the divisional courts, to whom appeal is taken, as a rule do not send back the case for new trial. We feel up there that there ought to be some limit to litigation. So the divisional judges often say: 'You can bring that evidence up here, Mr. So-and-So, and we'll admit it and pass on the case right here.' No case in Ontario fails on account of form. Disregard of form does not nullify the proceedings that have been taken."

Justice Riddle then read figures showing how small a percentage of cases taken on appeal had been reversed, turning to the criminal procedure, continued:

"Except in cases of treason, manslaughter, and the like, the accused must be brought before a trial judge in twenty-four hours. He may elect either trial before the judge or a jury. Jury decision in those cases must be unanimous; if not, the judge dismisses the jury and may call another right then and there.

"I, myself," continued the justice pleasantly, "have hanged many a man. In my whole experience I have never seen as much as four days consumed in determining a murder case. We allow a maximum of five expert witnesses on the stand. But we don't ask them hypothetical questions three or four or five pages long. In a recent murder case before me I asked one of the expert alienists for the defense whether the witness was insane. He replid in the affirmative, and told just how he was insane.

"'Did he know the nature and quality of his act?'

"'Yes,' replied the expert. 'He knew it was against the law, but he had an irrepressible impulse to do the act, and was mentally so constituted that he lacked inhibition to avoid doing it.'

"I charged the jury as follows: 'If you believe these doctors, and unless

you think you know more about the case than they do, you must find the defendant guilty.

"'We are an iron people, and must be iron in our execution of the law. If a man knows that what he is doing is against the law, no matter how insane he may be, it is the mandate of the law and your duty to hang him.'

"Our law says to a man who's troubled with an irresistible impulse to murder: 'I'll hang a rope up in front of your nose and see if that won't help you inhibit your impulses.' As a net result," continued the speaker, "we're not troubled much with expert witnesses in Canada. In short, there are two ideas about the law: the old idea that it is not so important whether a man gets justice, but that the main consideration is that the cleverest lawyer, the lawyer best able to utilize the forms of the law, should win. The other idea—the one we hold—is this: Let a man get his rights above all; and if he gets justice, no matter if the record does get a shock now and then."

I. MAURICE WORMSER, University of Illinois.

Revision of the Statutes in Ontario.—Robert Tyson, Esq., Official Court Reporter of the High Court of Justice at Toronto, advises us that the Revision Commission appointed by the Ontario Government for the revision of the statutes is constituted as follows:

The Hon. Featherstone Osler, Former Judge of the Ontario Court of Appeal; Sir William Meredith, Chief Justice of the Common Pleas Division of the High Court of Justice for Ontario; the Hon. Mr. Justice Anglin, of the Dominion Supreme Court of Ottawa; the Hon. Mr. Justice Teetzel, of the Common Pleas Division of the High Court of Justice of Ontario; His Honor, Judge Snider, Senior of the County Court of Wentworth County, Ontario; A. M. Dymond, Esq., Law Clerk of the Legislative Assembly. Furthermore, Ministers of the Crown, or their deputies, attend the sittings of the commission when the subject matter of laws relates to their department.

J. C. RUPPENTHAL, Russell, Kan.

Innocent Convicts.—In the *New York Sun* for November 23, 1911, there appeared an editorial under the above title in which there is a comment upon the case of John Boehman, who was sentenced to Sing Sing for life. The sequel reminds us of the case of Andrew Toth. After sixteen years of imprisonment and convict fare it has been certified by a competent witness that the alibi of Boehman, from the scene of the murder of which he was charged, was established. It will be remembered that Mr. Carnegie pensioned Toth after his release from the Western Penitentiary of Pennsylvania, and the writer of the editorial, referred to above, asks, "Will Boehman find a private benefactor also?" He goes on to say also that the state which wronged the man should recompense him. The judicial system of Great Britain makes provision for just such cases as this; so, also, does the judicial system of France. Senator Armrod of the New York Legislature last March introduced a bill—which, by the way, failed to pass—which included the following provision:

"If in the opinion of the Governor, a person pardoned by him was not guilty of the crime for which he shall have been imprisoned or fined, the Governor may fix the amount of compensation to be paid by the state to such a person as damages for such improper punishment." A. W. T.

The Cleminson Case.—The Cleminson wife murder case, recently decided by the Supreme Court of Illinois, is worthy of much consideration by all Supreme courts and other courts of appeal, because the court brushed aside technicalities in a case in which the evidence made it absolutely clear that the accused was guilty. The majority of the court in this decision expressed the rule that if, in the absence of errors, the verdict could not have been otherwise than guilty, there should be no reversal on account of errors committed in the original trial. On the other hand, in commenting upon the error in this case, namely, the vigorous and irrelevant cross-examination of three witnesses called at the request of the prosecuting attorney by this attorney himself, the court said, "This error, the court concedes, was so grave and substantial that it would not only justify, but would require the reversal of a judgment in any case if there were any doubt whatever of the guilt of the accused." "But," the court adds, "the question then arises whether it is the duty of this court to reverse the judgment or to affirm it on the ground that the guilt of the defendant was so conclusively established by competent proof that the judgment should be affirmed, notwithstanding the errors committed. After much deliberation we have concluded that, as we cannot say that upon competent evidence there might be a doubt as to the defendant's guilt, we would not be justified in reversing the judgment on account of the errors committed. We cannot escape the conclusion that the verdict could not have been otherwise than 'guilty,' even if none of the errors referred to had been committed." R. H. G.

"Lynching and Miscarriage of Justice."—In the *Outlook* for November 25, 1911, there appeared an editorial by Theodore Roosevelt under the above title. In this editorial the former President reiterates the statement that race rights and lynchings are not peculiar to any section of our country. The recent cruel murder of a negro prisoner at Coatesville, Pa., by a mob was contrasted with the treatment that was accorded to a negro prisoner at Uniontown, Pa., early in November. This negro had committed rape. He was taken to prison, indicted, and sentenced to the penitentiary within five days. The state should be congratulated upon the observance of law and upon the speed of justice in the latter case. While there is not the slightest excuse for mob action in any case, yet the mere denunciation of the crime of the mob avails nothing. The community in countenancing delays in the execution of justice deliberately prepares itself for the violence of mob action. Mr. Roosevelt recommends that "each community should provide that rape be treated as a capital crime and that legislation be enacted permitting the instant assembling of a grand and petit jury and the immediate trials of jury, and his immediate execution if convicted."

Bad as is the picture which appears in the savage action of the mob, an equally bad aspect is shown in a situation which occurred last August in Kings County, New York, the terms of which are quoted here from Mr. Roosevelt's editorial: "On August 25 last, a huge white man named Frank Brach was arrested for rape of a young Austrian girl. The girl positively identified the man and he was indicted before the grand jury, not only for rape, but for highway robbery. He was actually released on $2,000 bail. Detectives who had arrested him at that time, followed him up, when another girl was also criminally assaulted while this defendant was out on

bail. They caught him and brought him to the bedside of the victim, where she identified him by his hands. For this second offense, on motion, he was again admitted to bail for $5,000, and is now out on bail, the total amount of his bond being $7,000, including $1,000 on the charge of highway robbery."

The writer of the editorial goes on justly to say that such "namby-pamby-ism" as this in the case of one who is positively identified as the perpetrator of a horrible crime is quite as grave a menace to law and order as the gravest case of lynching on record. Certainly no locality which countenances such unjustifiable leniency as occurred in this case can throw stones at another in which actual mob violence occurs. We do not want our agitation for adult as well as juvenile probation and for the institution of the indeterminate sentence to lead us to extreme and unwarranted leniency, which may become known as characteristic of American legal and penal procedure. We do not want our brethren of other nations ever to be justified in a scornful use of the phrase, "Americanising the Criminal Law." Mr. Roosevelt concludes his editorial as follows:

"Maudlin sympathy for criminals is a potent provocation to brutal and lawless mob action against criminals and against prisoners who are merely accused of crime—and is morally in no way better; and so long as decent citizens refuse to rouse themselves and to secure laws which will prevent such action as that taken at Brooklyn, as above recited, and which will also secure speedy and condign punishment of men convicted of the one crime worse than murder, they must themselves share responsibility for the conditions that bring about mob violence." R. H. G.

Bill to Suppress Houses of Ill-Fame in Illinois.—Section 1. "Be it enacted by the people of the state of Illinois represented in the General Assembly: that whoever shall erect, establish, continue, maintain, use, own or lease any building, erection or place used for the purpose of lewdness, assignation or prostitution is guilty of a nuisance, and the building, erection or place, or the ground itself, in or upon which such lewdness, assignation or prostitution is conducted, permitted or carried on, continued or exists, and the furniture, fixtures, musical instruments and contents are also declared a nuisance, and shall be enjoined and abated as hereinafter provided.

Section 2. "Whenever a nuisance is kept, maintained, or exists, as defined in this act, the state's attorney or any citizen of the county, represented by any attorney he may select, may maintain an action in equity in the name of the people of the state of Illinois, upon the relation of such state's attorney or citizen, to perpetually enjoin said nuisance, the person or persons conducting or maintaining the same, and the owner or agent of the building or ground upon which said nuisance exists. In such action the court or a judge in vacation shall, upon the presentation of a petition therefor alleging that the nuisance complained of exists, allow a temporary writ of injunction, without bond, if it shall be made to appear that the nuisance exists to the satisfaction of the court or judge by evidence in the form of affidavits, depositions, oral testimony or otherwise, as the complainant may elect, unless the court or judge, by previous order, shall have directed the form and manner in which it shall be presented. Three days' notice in writing shall be given the defendant of the hearing of the application for the temporary writ, and if then continued at his instance, the writ as prayed for shall be granted as a matter of course.

When an injunction has been granted it shall be binding on the defendant throughout the judicial district in which it was issued and any violation of the provisions of injunction herein provided shall be contempt of court as hereinafter provided.

Section 3. "The action when brought shall be triable at once after due and timely service of the notice has been given, and in such action evidence of the general reputation of the place shall be admissible for the purpose of proving the existence of said nuisances. If the complaint is filed by a citizen, it shall not be dismissed except upon a sworn statement made by the complainant and his attorney, setting forth the reasons why the action should be dismissed, and the dismissal approved by the state's attorney in writing or in open court. If the court is of the opinion that the action ought not to be dismissed, he may direct the state's attorney to prosecute said action to judgment, or any citizen of the county may be substituted for the complaining party and prosecute said action to judgment. If the action is brought by a citizen and the court finds there was no reasonable ground or cause for said action, the costs may be taxed to such citizen.

Section 4. "In case of the violation of any injunction granted under the provisions of this act, the court, or in vacation, a judge, may summarily try and punish the offender. The proceedings shall be commenced by filing with the clerk of the court an information under oath, setting out the alleged facts constituting such violation, upon which the court or judge shall cause a warrant to issue, under which the defendant shall be arrested. The trial may be had upon affidavits or either party may demand the production and oral examination of the witnesses. A party found guilty of contempt under the provisions of this section shall be punished by a fine of not less than two hundred dollars ($200) nor more than one thousand dollars ($1,000) or by imprisonment in the county jail for not less than three or more than six months, or by both fine and imprisonment.

Section 5. "If the existence of the nuisance be established in an action as provided in this act on the application for an injunction or in a proceeding for contempt, an order of abatement shall be entered as a part of the judgment in the case, which order shall direct the removal from the building or place of all fixtures, furniture, musical instruments or movable property used in conducting the nuisance, and shall direct the sale thereof in the manner provided for the sale of chattels under execution, and the effectual closing of the building or place against its use for any purpose, and so keeping it closed for a period of one year, unless sooner released as hereinafter provided. If any person shall break or enter or use a building, erection or place so directed to be closed, he shall be punished for contempt as provided in the preceding section. For removing and selling the movable property the officer shall be entitled to charge and receive the same fees as he would for levying upon and selling like property on execution, and for closing the premises and keeping them closed, a reasonable sum shall be allowed by the court.

Section 6. "The proceeds of the sale of the personal property as provided in the preceding section, shall be applied in payment of the costs of the action and abatement, and the balance, if any, shall be paid to the defendant.

Section 7. "If the owner appears and pays all costs, fines, penalties and forfeitures of the proceedings and files a bond with sureties, to be approved by

the clerk, in the full value of the property, to be ascertained by the court, or in vacation by appraisers appointed by the clerk, conditioned that he will immediately abate said nuisance and prevent the same from being established or kept therein within a period of one year thereafter, the court, or in vacation, the judge, may, if satisfied of his good faith, order the premises closed under the order of abatement, to be delivered to said owner, and said order of abatement canceled so far as the same may relate to said property. The release of the property under the provisions of this section shall not release it from any judgment, lien, penalty or liability to which it may be subject by law.

Section 8. "Whenever a fine may be assessed by the court for the violation of an injunction as provided in section four of this act, it shall constitute a lien upon the real estate upon which the acts constituting the contempt shall have been committed, and an order of execution shall issue."

The present Illinois Criminal Code was enacted in 1874 and so far as it relates to the subject of prostitution it is substantially the same as the statute of 1845. It provides a maximum penalty of $200 and applies only to the individual, i. e., "whoever keeps or maintains a house of ill-fame" or "whoever patronizes the same" is liable. The property used for immoral purposes is not penalized. The above bill will receive further comment later in this JOURNAL.

R. H. G.

"The Scandal of the Lawless Law."— *Collier's Weekly* has published a series of articles relating to Criminal Law in America. The latest of these, in the issue of December 23rd, is entitled, "The Scandal of the Lawless Law," the substance of which follows:

What every man asks of the law is chiefly reducible to these two things:

1. Can he go to a lawyer, in the average of cases, and obtain an honest opinion, upon which he may rely, as to what is the law?

2. Can he go to the courts and, without undue delay and without ruinous cost, obtain justice?

I believe that no one who with open mind will review the decisions of our courts, who will follow a sufficient number of trials to their issue, can answer these two questions otherwise than with a flat NO. This is the indictment made by the ablest members of our bar, by the foremost judges of our courts, and by some of our most distinguished statesmen. Consider the first question.

To simplify the issue, I will set out a number of simple questions, with the answers drawn from the records. We will consider first: Do the lawyers know the law? Answer—They do not. Here are a few instances:

The New York Court of Appeals refused to permit the introduction of certain new evidence in a case and affirmed the decision of the lower court. The appellants appealed to the United States Supreme Court and presented to that body a petition signed by twenty-four of the leading lawyers of the New York bar. Merely to mention a few of the better known, the list contained the names of Frederic R. Coudert, Lewis Cass Ledyard, William Allen Butler, William D. Guthrie, Treadwell Cleveland, and Everett P. Wheeler. This petition was in effect an opinion that the Supreme Court had the power to mandamus the New York Court of Appeals to compel it to admit the new evidence. In a curt decision of scarcely ten lines, Chief Justice Fuller, speaking for a unanimous court, denied that the Supreme Court had any such power. (Hawkins, 147 U. S. 486; 13 S. C. 512.)

Consider the application. Among the twenty-four lawyers signing this petition were at least a half dozen whose appointment to the United States Supreme Bench would have been regarded as eminently fitting and praiseworthy. Either then the Supreme Court unanimously made a rule in this present case which was not the law otherwise, or the eminent counsel signing this petition did not know the law, or, as counsel, they signed an opinion which they would not have subscribed to as judges.

Lest this be regarded as an exceptional instance, here is another:

Replying upon a written opinion signed by five of the ablest lawyers then at the Connecticut bar—the opinion is set forth in 44 Conn. 395—the directors of a railway company refused to obey a peremptory mandamus issued by the Superior Court. They were adjudged guilty of contempt and sentenced to jail, and this sentence was confirmed by the Supreme Court, the latter saying: "The reason assigned in their behalf furnishes no excuse for their misconduct."

Same alternative: Either their "five able lawyers" gave a dishonest opinion, which landed their clients in jail, or they did not know the law.

And again: In an action for partition which involved the title to a very considerable property, the most eminent counsel then at the New York bar, whom it were invidious to name, was retained to supervise the proceedings. The attorneys in the case strongly advised that an assignee, appointed in bankruptcy proceedings many years before, be joined as a defendant, to save all question. But the eminent counsel declared that he would retire from the case if any such unnecessary parties were made defendants—I am quoting from *Law Notes*. The attorneys were overawed, the action went on without the assignee, and, as a result, the New York Court of Appeals decided that the whole of the property partitioned was defective. (11 Daly, N. Y. 373, 464.)

And again: In South Dakota, proceedings being taken to disbar a state's attorney for bringing actions for his clients against persons whom he was prosecuting for crime growing out of the same transactions, which things were specifically forbidden by statute for a state's attorney to do, the attorney pleaded that he was *ignorant of the existence of the law!*

And again: In New York an attorney had advised a person to avoid the service of a subpoena issued by a court of the United States, and the latter thereupon evaded the marshal and subsequently fled to Canada and the subpoena was not served. The attorney was subsequently indicted by a Federal Grand Jury under Sections 5398, 5399 of the United States Revised Statutes, and was tried and convicted and fined. The attorney, in the proceedings to disbar him for misconduct, set up as a defense that *he did not know* of the existence of this Federal statute, or that an act which directly obstructed the administration of justice could be punished criminally.

Needless to say, both the New York and the Dakota courts refused to consider such a defense—that an *attorney* would plead *ignorance of the law* as an extenuation! Commenting on these cases, the editor of the *American Law Review* said:

"Think of the appalling ignorance of the principles of right, of fair dealing, of good faith, and of the obligations of a lawyer which these cases disclosed! The bar was once known as an honorable profession. What can be said of it today in the light of these examples?"

But consider another and more practical phase. Not only can a client have

no confidence whatever that what his attorney tells him is the law, but if his attorney tells him wrong, he has absolutely no redress, even though the result should incidentally mean that he would be hanged!

Said the Hon. Frederick W. Lehmann, former president of the American Bar Association, in his Oklahoma address:

"The litigant, untrained in the law and unused to its mysteries, must bear the burden of the blunders of the court and counsel, grievous as these may be. For the mistakes of the court he may have a costly and partial redress by appeal to a higher tribunal, while for the mistake of counsel he has, in the case itself, no redress at all, and outside of the case none that is greatly worth while. The St. Louis Court of Appeals did indeed hold that the gross ignorance, incompetence, and imbecility of counsel for a defendant accused of murder, by reason of which the defendant was deprived of essential rights and advantages guaranteed to him by law, constituted sufficient cause for setting aside a conviction and granting a new trial. But in a later case, of conviction of murder and sentence to death, the Supreme Court denied this, saying:

" 'The neglect of an attorney is the neglect of his client in respect to the court and his adversary. The decisions are too numerous to cite; but their uniform tenor, is to the effect that neither ignorance, blunders, nor misapprehension of counsel not occasioned by his adversary is ground for setting aside a judgment or awarding a new trial. The rule is founded upon the wisest public policy. To permit clients to seek relief against their adversaries upon the alleged negligence or blunders of their own attorneys would open the door to collusion and would lead to endless confusion in the administration of justice.' "

For the rest, the pages of the court reports, and especially of cases on appeal, are simply strewn with raps at the ignorance, carelessness, and pettifogging of the attorneys. To cite but a couple of instances:

Justice Cartwright, 236 Ill. 369: "If attorneys have not yet learned of this obvious proposition by its wearisome repetition in so many cases, it would seem to be of no use to state any principle of law in the decisions of this court."

The Supreme Bench of Indiana, 39 Ind. App. 592:

"Ninety-five reasons are given why a new trial should have been given to the appellant. Judgment affirmed." R. H. G.

Joint Conference on Legislation Needed in New York State.—Following a suggestion made at the recent State Conference of Magistrates, a joint conference on desired legislation in the field of correctional work was held in New York City on December 22. The conference was attended by representatives of the State Board of Charities, the State Commission of Prisons, the State Prison Department, the State Probation Commission, the fiscal supervisor of State Charities, the State Prison Association, the State Charities Aid Association, the State Conference of Charities and Correction, the National Committee on Prison Labor and the State Conference of Magistrates. Resolutions were adopted urging upon the governor and the legislature the following important needs: The establishment of a state reformatory for male misdemeanants between the ages of sixteen and twenty-one years; the establishment of custodial institutions for the care and treatment of defective delinquents, together with a testing-house where defendants suspected of being mentally defective may be temporarily sent for observation; the enlargement of

the State Training School for Girls at Hudson, and the possible construction of a similar institution in the western part of the state; the early completion of the State Farm Colony for Vagrants, which was launched by the legislature of 1911; the state ownership and management of the five penitentiaries now conducted under county auspices; the supervision of parole officers by the State Probation Commission and the more extensive use of probation officers in looking after persons paroled from penal and reformatory institutions. The joint conference also proposed that in case the necessary funds were not available for carrying out the recommendations referred to above, there should be a long-term bond issue. A. W. T.

Conference on Proposed Amendments to the Penal Code of Georgia.—At the recent convention of trial judges in Georgia the following resolutions were adopted:

Resolved, that the chairman appoint a committee consisting of seven members to report to a conference of the Superior Courts, to be held on Monday, April 29, 1912, such amendments and changes in the penal code of this state as they may think proper; and that all of the judges of the Superior Courts of the state be requested to write out their opinions as to such changes and amendments as they may deem advisable, and that the legal fraternity of this state and any other citizens thereof are respectfully invited to make such suggestions in regard thereto as they may think proper for the best interest of the state.

Resolved, further, that the governor be notified of this action.

The chairman appointed on this committee: Judge Maddox, chairman; Judge Roan, Judge Daniel, Judge Rawlings, Judge Freeman, Judge Worrill and Judge Hammond.

HENRY C. HAMMOND, Judge of Superior Courts, Augusta, Ga.

A Progressive Amendment to the California State Constitution.—On October 10, 1911, the people of the state of California adopted an amendment to the state constitution by adding a new section to Article 6 thereof to be numbered Section 4½, which reads as follows: "No judgment shall be set aside or new trial granted in any criminal case on the ground of misdirection of the jury or improper admission or rejection of the evidence or for error as to any matter of pleading or procedure, unless after an examination of the entire cause, *including the evidence,* the court shall be of the opinion that the error complained of has resulted in a miscarriage of justice."

The object of this amendment to the constitution is to permit the Appellate Courts to sustain the judgments of the trial court in criminal cases where there have been mistakes in the trial, although justice has been properly meted out to the defendant upon a consideration of all facts of the case. The amendment is designed to prevent criminals from escaping justice because of technicalities. The amendment was necessary because before the adoption of the same the Appellate Courts had only jurisdiction to review questions of law. The amendment gives these courts the power to review the facts as well as the law.

The Appellate Courts in California have been growing more and more technical and these technical rulings, in the majority of cases, have been in favor of the criminal. In fact the Supreme Court decided in 47 California 114, that "every error in the admission of testimony is presumed to be injurious un-

less the contrary clearly appears." As early as the 21st California, this court held that in an indictment for robbery it was fatal to the indictment not to state that the property taken was not the property of the person charged, although the indictment was to the effect that the defendant did violently and feloniously take money from the person of one John Doe by force, threats and intimidation and against the will of said John Doe, contrary to the form of the statute, etc. Again, in 56 California, 406, a conviction was set aside because the letter "n," by clerical mistake, was left out of the word "larceny," although there is no doubt whatever that neither the defendant nor other person could have any doubt of the crime with which he was charged. In 137 California, at page 590, the court held that an indictment which charged that "Lee Look unlawfully and with malice aforethought killed Lee Wing, contrary to the form, force and effect of the statute in such cases made and provided and against the peace and dignity of the state of California," was defective in that it did not charge murder nor state that Lee Wing was a human being. The Supreme Court held that the averment would apply to the crime of malicious mischief committed by maliciously killing a horse, a dog or a bird. In other words, that Lee Wing might have been a dog, a horse or a bird, and therefore the killing was not murder.

Such rulings as the foregoing have built up two systems of law, one for the poor and the other for the rich. If the prisoner is poor, he obtains only the counsel appointed by the court to defend him, or is intimidated into pleading guilty, or is able to obtain the most ordinary counsel. The wealthy prisoner can obtain experienced counsel, who make use of all technicalities possible in defending their client. Experienced judges say that it is almost impossible for a trial judge not to make some mistakes in rulings in a long trial, as the judge is ordinarily called upon to make these rulngs offhand and without reference to authorities. It is a well-known fact that the defense frequently endeavors to "catch the judge" and obtain rulings which it knows are incorrect, in order to obtain a new trial or a reversal in case of a refusal of a new trial. The result has been that the trial judge, for fear of a reversal, is prone to err in favor of the defendant criminal and against the prosecution. If on account of a trivial error a new trial is granted, the case may never come to trial again for the reason that the witnesses may have died or disappeared, or the evidence of the prosecution be lost, or the case may be dismissed for the reason that enormous expense will be entailed upon the county with less hope of conviction than upon the former trial.

As it is now, the common people have lost confidence in the courts, criminals count on the possibility of escaping punishment, crime increases and the county and state are put to vast expense in the often fruitless prosecution of a criminal. If the Appellate Courts will act under the above constitutional amendment as the people of the state of California intended they should, they will be called upon to reverse a case only when injustice has been done by the accused, and a "common-sense basis of appeal will be established and public confidence restored, * * * * the increase of crime will be checked, the number of appeals will be reduced, the expense of trying cases will be greatly lessened and culprits will be punished swiftly and with certainty." Similar legislation has been adopted in New York, Wisconsin and Oklahoma.

EDWIN M. WILCOX, San Jose, Cal.

An amendment like the above was adopted by the state of Oregon about a year ago.

Judge George B. Winston of the Third Judicial District Court of Montana writes with respect to the same matter:

"I had introduced a similar amendment in the legislature of the state of Montana; it passed the senate but was killed in the house by the lawyers of that body. It was again introduced in the legislature a year ago and again passed the senate but was again killed in the house; but I am in hopes that some day we will see it enacted into law in this state. It came close to being passed in the house, but the lawyers of that body, in order to defeat it, induced the Democrats to make it a party measure, but how this was done seems to be a mystery."

R. H. G.

JUVENILE PROTECTION.

Report on the Protection of Minors in Rome.—It will be of great interest to many men and women in the larger cities of the United States who are interested in the questions arising concerning the punishment of children to read the yearly report of the "Patronato Dei Minorenni Condannati Condizionalmente Di Roma."

In Italy in 1905, upon the passage of an indeterminate sentence act, this society came into existence with the object of carrying on probation work and establishing juvenile courts. It undertook to have an attorney in attendance at all trials of minors, to watch over those convicted, not only during the term of the indeterminate sentence, but until they came of age. During the past six years many branch societies have sprung up throughout Italy, in Milan, Florence and Venice, all of which are aiding in the splendid work.

In Italy, the land where modern practical philosophy is most advanced, these societies differ from their American cousins in taking up the theory of probation as well as its practice and in having as their leaders men of world-wide fame as criminologists and authorities on modern criminal law and practice. The society in Rome is endeavoring to collect all books on the subject and to exchange with all magazines in order that its library may be a storehouse of knowledge required for such a difficult study.

We can only add that their practical work has been of the highest value and their efforts untiring in the attainment of results in individual cases.

With the smaller and more permanent population of the Italian cities, a greater degree of statistical certainty of results is attainable than in America, but the Italian societies have gone far to show that a theoretical and scientific handling of a practical question brings about the best results.

JOHN LISLE, Philadelphia.

New York State Conference of Magistrates.—The Third New York State Conference of Magistrates, which met in Albany on December 8 and 9 under the presidency of Police Justice John J. Brady of that city, proved to be the most interesting and important conference yet held. A feature of the opening meeting was a stereopticon address by Dr. George M. Parker, psychiatric examiner for the Prison Association in the New York City Tombs, on the subject of "The Detection and Treatment of Defective Delinquents." Dr. Parker, after describing the various types of the feeble-minded and other mental defectives, pointed out the serious extent to which these classes of persons clog the machinery of our courts and correctional institutions. He reported that about 35 per cent of the inmates of Elmira Reformatory are mentally

defective, and that the proportion of the feeble-minded in jails, penitentiaries and workhouses is probably larger. He recommended a special state institution for the care and treatment of defective delinquents and another institution where defendants might be committed temporarily for observation and study. Secretary Robert W. Hebberd of the State Board of Charities, in discussing Dr. Parker's address, told of the provisions made for these classes of offenders in Europe and strongly urged the establishment of similar institutions in New York State. He showed that the commitment of defective delinquents to the ordinary custodial asylum for defectives makes the custodial asylum an objectionable place to which to send defectives who are not delinquent. Before the conference adjourned it adopted a resolution calling upon the legislature to establish the necessary institutions for mentally defective delinquents.

Other institutional needs in New York State were brought out through a symposium participated in by Judge Robert J. Wilkin of Brooklyn, Judge George A. Davis of Rome, President Charles H. Strong of the board of managers of the State Training School for Girls, Dr. Orlando F. Lewis, secretary of the Prison Association, and Frank E. Wade, a member of the State Commission of Prisons and of the State Probation Commission. At present there is no institution, except for New York City, to which male misdemeanants from 16 to 21 years of age can be committed, unless they are sent to jails, penitentiaries and workhouses, where they are mingled with older, hardened prisoners. The short-sightedness and disastrous results of trying to get along without a suitable institution for this class of offenders was forcibly presented by Commissioner Wade, and his address was ordered printed and sent to the members of the legislature. Later the conference adopted a resolution renewing its recommendations of the previous year, which called for the establishment of a special state reformatory for youthful male misdemeanants.

The other institutional need which stood out most prominently was more adequate accommodation for delinquent girls. The state at present has only one State Training School for Girls under 16 years of age, and its capacity is limited to a little over 300. Judge Wilkin declared that he knew of 30 girls in his jurisdiction who ought to be sent to the State Training School for Girls, but there was no room for them there. This is the common experience throughout the state. The magistrates therefore went on record strongly urging the legislature to provide more room at the Hudson Training School and suggesting also the building of an additional State Training School for Girls, to be located preferably in the western part of the state.

Another subject which evoked much interest was the discussion of illegal train riding, trespassing upon railroad property and other depredations committed against railroads by boys. An illuminating address on this subject was given by Superintendent Franklin H. Briggs of the State Industrial School for Boys, and other speakers were Captain Orville A. Rothrock of the Delaware & Hudson Railroad police force, Recorder Peter A. Cantline of Newburgh and Recorder William A. Gill of Elmira. Superintendent Briggs stated that 57 per cent of the boys in his institution practiced freight jumping before being committed to the school, many of them having traveled in this way all over the United States. In pointing out that the moral dangers of this

practice are more subtle and more to be dreaded than the physical dangers, he spoke as follows:

"The boy being permitted to ride with impunity, knowing it to be contrary to law, knowing that those charged with the execution of the law wink at its violation, soon grows to have a contempt for the law and its representatives. His excursions gradually take him farther afield; he becomes hungry, but has no money; kind-hearted, sympathetic people supply him with food for the asking, and the more improbable the lie which he tells to arouse their sympathy and open their larder, the more generous the donors become. He thus becomes a beggar with the attendant loss of self-respect and ambition, for why should he labor to gain the wherewithal to buy food and transportation when the one can be had for the effort of jumping a train and the other for the mere asking. While engaged in this illegal train riding boys are thrown into contact with tramps and oftentimes with the worst criminals of the country. The confirmed hobo is constantly on the outlook for a boy to be his attendant, and whom he may use for the gratification of his perverted sexual appetite, and once a boy becomes addicted to this last practice his moral degradation is complete.

"The burglarizing of cars naturally follows from the train riding, and other crimes from association with the confirmed criminals who make freight trains their means of transportation."

Superintendent Briggs placed the blame for these evils largely upon the negligence of parents. Children often begin frequenting the railroad tracks because their parents encourage them to steal coal. The speaker urged more stringent enforcement of the laws by judges, police officials and the railroad authorities against train-hopping and trespassing upon railroad property.

Other matters brought before the conference were the question as to the wisdom of permitting defendants to plead to lesser offenses than those originally charged; the importance of having a public prosecuting attorney in police courts, and the need of more and better interpreters.

One practical outcome of the meetings was the adoption of a resolution favoring a joint conference of different state departments and private organizations in order that there might be a consensus of opinion as to what legislation concerning the trial and treatment of offenders should be requested at this winter's session of the legislature. As is pointed out in another note in this number of the *Journal,* such a conference was shortly afterwards held in New York City. A special committee was also appointed to confer with the bar associations of the state concerning needed amendments to the code of criminal procedure, having reference especially to the acceptance of cash bails and to the acceptance of pleas of guilty in felony cases without waiting for indictment.

The three annual conferences held by the magistrates have developed a strong desire to do something more than get together for a talk-fest. The need of doing something in an active way to produce practical results has been strongly felt. It was therefore decided to change the name of the organization to the State Association of Magistrates. The officers elected for the coming year were: President, Otto Kempner, chief city magistrate of New York City; vice-president, J. K. O'Connor, city judge of Utica, and

secretary, Arthur W. Towne, secretary of the State Probation Commission, Albany. The proceedings of the conference will be published by the Probation Commission. A. W. T.

School Defects Make Criminals.—Public responsibility for the conditions which bred the youthful murderers of Guelzow in Chicago recently was emphasized in Washington by Professor C. R. Henderson at the meeting of the Sociology Section of the American Academy for the Advancement of Science. "Unemployment in this country, as elsewhere, is due in a great measure to the vast number of misfits among men," said Dr. Henderson. "Human misfits are produced by the primitive educational methods which prevail in this country.

"Children in our large cities are required to attend school a certain number of days for a certain number of years, and to pursue certain studies, few of which are of any help. Then the children are turned out of school only to become, in an alarming number of cases, social derelicts and even criminals, as has been illustrated so tragically in Chicago within the last few weeks.

"My investigations show that the state employment agencies generally are inefficient, inadequate and badly managed. Inefficiency and dishonesty characterize a large proportion of the private employment agencies." R. H. G.

A National Children's Bureau.—A bill to establish in the Department of Commerce and Labor a bureau to be known as the Children's Bureau was reported without amendment by Senator Borah on August 14, 1911. The text of the bill, which is still before Congress, follows:

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, that there shall be established in the Department of Commerce and Labor a bureau to be known as the Children's Bureau.

Sec. 2. That the said bureau shall be under the direction of a chief, to be appointed by the President, by and with the advice and consent of the Senate, and who shall receive an annual compensation of five thousand dollars. The said bureau shall investigate and report upon all matters pertaining to the welfare of children and child life and shall especially investigate the questions of infant mortality, the birth rate, orphanage, juvenile courts, desertion, dangerous occupations, accidents and diseases of children, employment, legislation affecting children in the several states and territories and such other facts as have a bearing upon the welfare of children. The chief of said bureau may from time to time publish the results of these investigations.

Sec. 3. That there shall be in said bureau, until otherwise provided for by law, an assistant chief, to be appointed by the Secretary of Commerce and Labor, who shall receive an annual compensation of two thousand four hundred dollars; one private secretary to the chief of the bureau, who shall receive an annual compensation of one thousand five hundred dollars; one statistical expert, at two thousand dollars; two clerks of class four; two clerks of class three; one clerk of class two; one clerk of class one; one clerk, at one thousand dollars; one copyist, at nine hundred dollars; one special agent, at one thousand four hundred dollars; one special agent, at one thousand two hundred dollars, and one messenger, at one thousand four hundred and forty dollars.

Sec. 4. That the Secretary of Commerce and Labor is hereby directed to furnish sufficient quarters for the work of this bureau at an annual rental not to exceed two thousand dollars.

Sec. 5. That this act shall take effect and be in force from and after its passage.

Since the above was put into type this bill has passed the Senate. Its friends are very hopeful that it may pass the House and become law. (Feb. 9.) R. H. G.

How the Juvenile Court Benefits Adults.—At the Child Welfare Conference in Philadelphia recently, Special Assistant District Attorney Owen J. Roberts said that thousands of adults brought into the juvenile court with the children are educated by the process out of their hopeless indifference. He noted also that the judges who first distrusted this system and the probation officers have ultimately learned to trust both and to lean upon the probation officers' judgment. Assistant District Attorney Patterson recalled how some judges at first sneered at medical examinations and later came to agree that such examinations were absolutely necessary to understand the cases.

R. H. G.

The Feeble-Minded Delinquent.—Mr. O. F. Lewis, General Secretary of the Prison Association of New York, read a paper on the above subject before the New York Conference of Charities and Correction at Watertown, N. Y., in October, 1911. The substance of his paper follows:

"Without emphasizing the practical certainty of conditions as to feeble-mindedness or mental defectiveness in our penitentiaries, jails and state prisons, let me give several concrete instances of the career of boys reported as imbecile by the physician of the Elmira Reformatory, which cases have been brought to light in the Sage Foundation study. Of 17 such imbeciles paroled to the Prison Association in 1904, 12 had previously been arrested and 10 had previously been imprisoned. At least 5 of the 17 have been in prison since their release from the reformatory in 1904. One of the men reported as imbecile had been six times arrested and three times imprisoned before his commitment to Elmira and is now a fugitive from justice. Of the 60 men recorded as defective mentally in a group of 450 men paroled in 1904, 42 had been arrested prior to their commitment to Elmira, and 23, or over 50 per cent have been arrested since their parole. Incidentally it should be stated that of the 77 men reported as mentally defective or imbecile, 26 were found to be infected with venereal disease.

"Recently the Prison Association of New York appointed a special committee on defective delinquents. The membership of this committee is composed of about 25 men prominent in the study and treatment of the delinquent. The special aims of the committee are to stimulate the study of defective inmates of correctional institutions, to standardize the methods of such research work, possibly to publish the results of such studies and research, to gain public interest in this field and ultimately to secure general legislation providing for adequate mental and physical treatment of all defective delinquents.

"There are undoubtedly thousands of feeble-minded persons in correctional institutions. The presence of the feeble-minded is a detriment to many plans that have been adopted for the instruction and training of prisoners.

The complete exclusion from the ordinary prison of persons afflicted with tuberculosis has improved the healthfulness of those prisons and has also supplied a better and more hopeful means of treatment for the unfortunate sufferers. The same treatment—segregation—should be applied to all those to whom special treatment would be a benefit, or whose ailments are of such a nature as to endanger the welfare of others. Dr. Henry E. Goddard of Vineland estimates that 25 per cent of delinquents are mentally defective. 'All mental defectives would be delinquents,' he states, 'in the very nature of the case, did not some one exercise some care over thm. The mentally defective must be cared for as we care for irresponsibles.' Mr. Ernest K. Coulter, for many years clerk of the children's court of Manhattan and Bronx, New York City, states his belief that the most important step to be taken by the state in its slow abandonment of antiquated methods of dealing with child offenders and victims of bad environment and neglect must be the establishment of institutions for the special treatment of the mental defectives of this class.

"In the great state of New York there is no special custodial institution to which the criminal feeble-minded can be committed and transferred.

"In view of this fact conferences were held last spring between Dr. Bernstein, the superintendent of the Rome State Custodial Asylum, and Mr. Lewis, as representing the Prison Association, and in order to test the attitude of various institutions dealing with delinquents, a tentative bill was drafted in April, 1911, by Dr. Bernstein, providing for the transfer of idiots and imbeciles from penal and reformatory institutions to the Rome State Custodial Asylum, it being provided that whenever the physician of any correctional institution shall determine that any person confined therein is in his opinion an idiot or imbecile and has been such from childhood, the administrative head of the institution may apply to the judge of the court of record to cause an examination to be made of such person by two legally qualified physicians. If this examination shows that this person is an idiot or imbecile, and not a demented or insane person, the head of the institution shall then ascertain from the Rome State Custodial Asylum if a vacancy exists therein for such a case, and if it does exist, he shall then apply to a judge or court of record for an order transferring such person to the Rome State Custodial Asylum. The said judge may issue such order of transfer, and the person may then be transferred and may be retained in the Rome State Custodial Asylum until legally discharged.

"The act further carried with it an appropriation of $50,000 to erect suitable fire-proof buildings on the grounds of the Rome State Custodial Asylum for the care, training and treatment of this class of feeble-minded.

"Miss Katherine Bement Davis, superintendent of the New York State Reformatory for Women, did not approve of the proposed bill in so far as it concerns women and girls. The bill seemed to her too hastily drawn, and she feared that the bill might result in creating an institution where the women would remain in partial idleness. Nor did she believe in sending criminal defective women to an institution containing men. Miss Davis continued. There will always be a larger number of men in our state institutions than women and consequently more defective men criminals than women in every institution. Most of the work which is best adapted to this type of

patients is assigned to men, and the women are left in idleness, or with merely the household tasks to perform. Moreover, the defective criminal women have usually very strong sexual propensities, and it would be impossible to give the freedom which a permanent custodial asylum should have in an institution for both sexes.'

"The method proposed for determining defective criminals is, according to Miss Davis' experience, not adequate. She stated that no women or girls who are idiots are committed to reformatory institutions. With few exceptions the defective women so committed are those which are called border line cases. No physician by paying one or two visits could ever tell whether such women are defective or simply 'naughty.'

"'In my judgment,' continued Miss Davis, 'women who are criminally defective should either have a separate institution of their own or should be annexed to some existing institution for women and girls where they can live largely out of doors and perform out-of-door labor at suitable seasons of the year. It should be definitely a farm colony, and they should not be placed in any institution in close proximity to a city. Possibly such an institution could be established in connection with the new farm colony for women over 30 years of age.'"

The bill was introduced but failed of passage. It undoubtedly acted as an entering wedge for the new institution. To bring the matter of the establishment of a state custodial institution before the conference Mr. Lewis offered the following resolution:

"That special custodial care of the criminal feeble-minded is necessary for feeble-minded persons now in correctional institutions in the State of New York and that the state conference of charities and corrections favors the establishment of a custodial asylum for the criminal feeble-minded, either as a separate institution administered by the state, or as a part of one or more existing institutions." R. H. G.

Das Institut der bedingten Begnadigung. Von I. Herrnstadt.—The most significant purpose in the struggle of society against criminality is the permanent improvement of those who are still morally corrigible. To execute the penalty in the case of such offenders might, as has long been recognized in America, endanger this purpose. Hence, in Germany, since the Imperial decree of October 23, 1895, the institution of the "Strafaussetzung" with the prospect of pardon has been arranged for. The "Institut der bedingten Begnadigung" thus created confronts a problem that can only be successfully solved if the judge is thoroughly familiar with the scattered modifying, supplementary and explanative ordinances of the Ministry of Justice. The present little book collects all the material in this field and thus becomes an almost indispensable guide not only for German judges, but also for all those persons in other countries who are interested in this phase of the administration of the law in Germany. A. A.

POLICE.

The Importance of a Public Prosecutor in Police Courts.—The following paper was read by Assistant District Attorney John N. Mosher, of Syracuse, at the recent New York State Conference of Magistrates. For the past year Mr. Mosher has been giving his time exclusively as public prosecutor in the

police court of that city. The only other cities in New York state having the regular services of a prosecuting officer in their lower courts are New York City, Buffalo and Rochester.

"Should a representative of the district attorney's office act as prosecutor in police courts and courts of special sessions? If so, in what sorts of cases?

"In the cities and larger villages of the state, the duties of the police magistrate cover a broad field and require the exercise of wisdom, judgment and discretion. There is a constant strain upon the judge and his work should be limited to the performance of his judicial functions. It is impracticable and impossible for the magistrate to investigate or prepare cases prior to the trial. He is a judge; not a prosecutor, inquisitor or investigator.

"No information can be properly drawn and no warrants should be granted, based upon indifferent investigation. This is particularly true in cases of felonies and the more difficult and unusual misdemeanors.

"The clerk of the court, assisted by the police and other interested parties, often makes the preliminary investigation, drafting the information upon which the magistrate grants the warrant. The clerk in most cases is not a lawyer, but his papers must present a case upon their face. The defendant appears by his counsel, and upon the trial it appears for the first time that the wrong remedy was selected. Instead of a burglary, it is a petit larceny. The window through which the thief entered was already raised an inch or two. Perhaps the wrongdoer is charged with robbery, whereas it is a larceny from the person in the night time. A defendant may be guilty of a crime. Competent proof thereof may be lacking, however, and conviction on that charge out of the question. Conviction, for instance, upon the charge of carrying concealed weapons within the meaning of Section 1897 of the Penal Law may easily be secured, though the logical charge may be assault.

"Hundreds of complex problems arise where better results could be obtained and justice secured by a different remedy from that actually selected. As has been stated, the necessary preliminary work cannot be done by the magistrate and the work is done by clerks who hurry the matter over, knowing that in a great majority of cases, where felonies are charged, their mistakes will be corrected in the grand jury. The correction, however, is costly to the county; the uncertainty demoralizes the prosecution and encourages and lends comfort to the wrongdoer. In consequence the grand jury is clogged with undeveloped cases.

"A prosecuting attorney, therefore, becomes necessary. He should be a representative of the district attorney's office, for he must follow and be responsible for the case from first to last. He should investigate the facts, draft or supervise the drafting of the warrant, and when satisfied of the guilt of the defendant aim, in proper cases, to secure a conviction at the earliest possible time. When the ends of justice may be best secured thereby, he should so engineer the case that it may be disposed of in the magistrate's court.

"The prosecuting attorney should reduce the charges where feasible in all cases of minor, uncertain and doubtful felonies to misdemeanors, but only upon a plea of guilty to the reduced charge, thus securing quick and certain justice and saving much time and expense of grand and petit juries.

"Under our old system, boys were sometimes sent to the penitentiary to await the action of the grand jury, many of whom had never before been arrested,

and were there subjected to the influence of criminals. An investigation of the facts at the court of special sessions, as brought out by an assistant district attorney, would have caused the case to have been disposed of at that court in a way that would be just and proper and would probably save one more good citizen to the community. Under the old system, cases were often sent to the grand jury, in which indictments were sometimes found, requiring a day of the time of the county court with the attendant expense, only to find that the matter might have been economically and justly disposed of at court of special sessions; and in many other cases indictments were not found because of the feeling of the grand jury that the crime was too small to merit the expense of a trial in a court of record, but these defendants should have had some punishment. It is one of the principles of modern criminal practice, that a quick, sure and certain sentence put in force at once, acts as a stronger deterrent to crime and is a better protection to society than a more severe sentence secured at the end of long litigation. Litigation of this character is costly and injects an element of uncertainty into a case which appeals to the resourceful criminal and arouses his gambling instinct.

"The result of this new system in Syracuse is that instead of 150 or more cases being presented to the October grand jury, the number now presented at that term is reduced to about 100. Cases are prepared and disposed of with certainty and despatch, the former congestion and delay incident thereto obviated, justice secured and society protected at the least possible cost of time and money. Such procedure makes the court of special sessions a popular one, and increases the volume of its business. It is the people's court.

"During the year ending December 1, 1911, 400 alleged felonies were reported to the assistant district attorney. These cases were investigated by him, aided by the police, and a full and complete record thereof filed with the district attorney. Of this number, 184 were sent to the grand jury, 216 were disposed of at the court of special sessions, as follows: Fifteen were discharged on examination; fifty were reduced to misdemeanors; twenty-five were withdrawn; 126 were reported to the district attorney as insufficient to justify criminal prosecution. Restitution was permitted in several of these cases; fines imposed amounted to $1,234, sentences imposed amounted to 125 months; sentences suspended amounted to 128 months.

"During the year 1910 there were 4,281 arraignments and 3,556 convictions for misdemeanors. The fines paid amounted to more than $6,000, an increase of more than 100 per cent over that received two years prior thereto.

"In the country districts, especially if the justice of the peace be unfamiliar with criminal law and procedure, he should in all felony cases, immediately after notice of the commission of the crimes, secure the assistance of the district attorney. The district attorney will save time and expense by taking the matter up at the beginning. The district attorney can get his evidence if he acts quickly; otherwise, evidence often cannot be secured after the defendant's attorney and friends have put in their work.

"Our entire system finds its best expression in the probation work being done in Syracuse, where Timothy J. Shea, a university graduate, lawyer and prince of good fellows, is successfully devoting all his time to the great work he has in hand as our probation officer. We have as an incident to this work what is known in our city as "Kehoe's Bureau," named after Court Attendant James

Kehoe. Mr. Kehoe through this court receives from delinquent husbands and fathers for the benefit of wives and children about $7,000 per year. The good accomplished by this office, however, cannot be estimated in dollars."

A. W. T.

Police Examinations in St. Louis.—A very advanced system of examinations for appointment to the police department of St. Louis has recently been devised by Mr. A. A. B. Woerheide of the Police Board in that city and approved by Governor Hadley and Chief William Young. It embraces the ideas found in the London Metropolitan system and those favored by the leading American experts.

Candidates for the grade of probationary patrolman are first required to pass a civil service examination intended to find out whether they have a reasonable amount of common sense and at least a primary education. Their moral character is also subjected to a severe examination, and a single defect is liable to spoil a man's chances. Having passed this test, the candidate is given ninety days' instruction in police work, both inside the station and outside. Then comes an examination which, if passed, admits him to the rank of a probationary patrolman. At the end of a year comes another examination for the grade of patrolman. Further promotion is determined in part by examination, in part by an efficiency record. The school of instruction for the candidates gives both practical and theoretical instruction in the most approved police methods. A medical division of the force is also established to test the physical condition of the department's members, and provision is made for gymnasiums, such as the London Metropolitan police use to very good advantage. The theory of the gymnasium practice is that an officer, if sufficiently agile and in good physical condition, will not be tempted to use arms, and that criminals, appreciating the greater severity with which they will be treated if caught with arms, will no longer carry them.

This is theoretically a very excellent system and its practical results will be watched with eagerness by every large American police department. The emphasis laid on moral character is perhaps the most significant feature. In America we have never been unable to find physically fit men for police work, nor, as a rule, men lacking in the necessary amount of intellect, but there has been and in many quarters still is a deplorable lack of moral strength. The same tendency seems to underlie the proposed system of promotion, since it removes the rigidity and tendency toward bookishness which spoils the efficacy of written examinations, and through the efficiency record is expected to give a good index to a patrolman's actual value.

GEORGE H. MCCAFFREY, Cambridge, Mass.

"The Policeman."—Mr. W. C. Duke, of the Atlanta Police Department, has published a little volume, entitled "The Policeman, His Trials and His Dangers." The booklet is a tribute to the loyal and faithful defenders of the homes of the nation. It ought to be in the hands, not of officers of the law especially, but in those of ordinary citizens who enjoy the protection of the police and take it for granted, without realizing the difficulties and dangers which these officers of the law must undergo every day of their lives on duty.

R. H. G.

PROBATION, PAROLE, PRISONS.

Committee on Adult Probation in the National Probation Association.—President George S. Addams, of the National Probation Association, has recently appointed a committee on adult probation, with Frank E. Wade, vice-president of the New York State Probation Commission, as chairman. The other members of the committee are: Demarchus C. Brown Indianapolis, Edwin J. Cooley of Buffalo, Charles A. DeCourcy of Boston, John J. Gascoyne of Newark, N. J., Alice L. Higgins of Boston, Joseph Lee of Boston, James A. Leonard of Mansfield, Ohio, Rev. Thomas J. Lynch of New York City, Tracy W. McGregor of Detroit, Howard P. Nash of Brooklyn, Harry Olsen of Chicago, Albert J. Sargent of Boston, H. H. Shirer of Columbus, James B. Vining of Cleveland and Edward F. Waite of Minneapolis.

The National Probation Association has formerly dealt chiefly with juvenile probation, but it will hereafter give more adequate attention to adult probation. There is great need of standardizing methods, of furnishing authoritative information and instructions to probation officers and judges and of promoting appropriate legislation. While most of the states have laws authorizing probation in cases of children, less than half of the states provide for its use with adult offenders. This committee, as time goes on, ought to make valuable contributions to the literature on probation and to accomplish much in improving and extending the system among adult offenders. A. W. T.

Accounting System for Probation Officers.—The New York State Probation Commission has recently published an accounting system for use by probation officers in that state who collect installment fines, restitution, reparation and family-support from persons on probation. The system includes a parallel columned cashbook, loose-leaf ledgers and official receipts. The amount of money collected in these forms in New York state has doubled during the past year and was in the neighborhood of $80,000. Investigations by the commission have demonstrated the need of a uniform system of receipts and bookkeeping.

The system recommended is adapted for general use in other states.

A. W. T.

Parole in California.—California has issued and just sent broadcast the latest annual report of the workings of its prison-parole system, which has now been in operation 15 years. According to this report, of 2,994 convicts at San Quentin and Folsom, 379 were out on parole. During that month they earned $15,600, and saved $3,870, or over $10 each. Since the law has been in force, though it has been applied very gradually, prisoners on parole have earned $890,975, and saved $221,796, or about a fourth of their earnings. And not a single prisoner has been out of employment.

That all should prove themselves worthy of the privilege was not to be expected. There are always smug hypocrites ready to pretend that they are reformed if there is anything to be gained by it. Others mean well, and fall into temptation. Yet out of 1,396 paroled since the law went into effect, only 210, or 16 per cent, have broken their word, and of these all but 77, or 5 per cent of the whole, escaped. If these are set off against those who have been helped back

to self-respect and a normal life by the opportunity to work and exercise the virtues of thrift and self-control, the gain to society is seen to be great.

R.H.G.

The School at the Kansas State Penitentiary.—The night school in the Kansas State Penitentiary aims to employ the spare time of working men, so that they will grow mentally and will be better fitted for life duties in and out of the prison. About 8 per cent of prisoners received are illiterate. Eighty per cent of them have not been beyond eighth grade work. About 8 per cent have been in high school, leaving 4 per cent of the men and women who have had business school or literary college opportunities. Every man and woman has a task of work. Supper comes at 5 o'clock and at half past five the all-right bell rings and the day officers go home. School hours are from half past six to 8 p. m. All illiterates are expected to attend. With others attendance is voluntary. In December, 1911, there were 370 men and 17 women entered out of a total prison population of 907. Three hundred and thirty-five of these attend for three alternate evenings each week. This leaves the other evenings for rest and preparation. On Thursday evening of each week classes in agriculture, electricity, shorthand and music are conducted. About 80 are in these classes, some of whom are also in other classes. In the regular classes, held three evenings each week, are taught reading, writing, spelling, arithmetic, geography, history, grammar, penmanship, bookkeeping, shorthand, Spanish, and English for a class of foreigners.

A number of prisoners cannot attend at this evening hour because of their work. For them classes are being formed which will be held in the afternoon, and about 40 will attend these classes. One good result to every man who attends school is that the lonely hour in the single cell is done away with and silent brooding and worrying are minimized. Very few of these men under the condition of their free life would seek self-improvement, but are urged to make the most of the days of confinement, which are their time of opportunity. The classes are small, having from 8 to 25 pupils. The teachers are all prisoners, except the teachers of the women and the chaplain, who is the superintendent of all. Scattered through the schoolrooms are 10 officer guards, who keep order and encourage the men in their studies. Entire freedom between teachers and pupils in the classes is allowed. The restraints of silence are done away with. Pleasant words and friendly laughter are heard, but through it all there is generally intense application to work. The aim of the work is practicality. Many men go out after schooling of a year or two who can sit down in the evening and enjoy their paper or magazine at their homes. Others go out with fresh understanding of methods of reckoning in mechanical work. Others are fitted for clerical positions. The clerks who are needed in the various departments in the penitentiary are being trained in the school. Generally these are men who have the longer terms, and when they go out they are fitted for such positions, and those who so become fitted are not often parole violators or second termers. It is from among the men who refuse to attend school and the voluntary Bible classes that the repeaters come. The state appropriates $2,000 annually for chapel, library and school purposes. From this fund also the band expenses are paid. Seventeen officers are paid for acting as guards during the school.

All school and library books are bought, and even the furnishings of the schoolroom and chapel and library are provided. This may seem an inadequate sum for all this. In some cases the students in special classes, such as shorthand, Spanish, electricity and bookkeeping, have spent their own money for their supplies and have counted it a privilege to do so. Utmost good-will prevails among the students. In addition to the number of students, as given above, twenty-three prisoners—teachers—give their time and talents and do excellent work. Of course, the teaching benefits them intellectually. They also are given the privilege of eating together at a special table, where they receive better food than is eaten in the larger dining hall, and they are allowed to talk together while eating. This is only the supper on school nights. At the close of the school they may be given some small reward as an appreciation of faithful work.

The school is held for 7 months in the year this winter. During the other months the chaplain meets with the teachers once a week, conducting a normal class. At the close of each school year in March an evening is devoted to an entertainment for those who have attended school. This consists of literary exercises by members of the school; some refreshments and an address by some invited educator. State Superintendent of Instruction E. T. Fairchilds, and Prof. W. H. Caruth of the State University, are among those who have given such addresses. Warden J. K. Codding and Deputy Warden C. M. Lindsay frequently visit the classes and in every way encourage and urge the men to take advantage of the opportunity. The success of the school is largely a result of the hearty co-operation between officers, teachers and prisoners. THOMAS W. HOUSTON, Kansas State Penitentiary.

Salvatore Pontano on the Indeterminate Sentence.—Salvatore Pontano has an article in the November-December issue of *Il Progresso del Diritto Criminale* on the indeterminate sentence law, which is agitating Italy, as it is also many of the states of the United States at the present time. His article is a brief in favor of doing away with the limitation that the indeterminate sentence cannot be availed of by recidivists, holding that it should be left to the discretion of the trial judge. The argument is largely based upon the fact that the clemency of the indeterminate sentence is of more remedial effect for offenders who have reached their majority, while it is often unavailable to them because of some offense in their childhood.

JOHN LISLE, Philadelphia.

STATISTICS.

The Laboratory Method in Statistical Training.—The laboratory method of giving instruction in biology, chemistry, and physics has long been recognized as essential. Not until the student has traced out the nervous system or located the various organs in the body of the animal; not until he has actually manufactured oxygen or analyzed compounds; not until he has experimented with the force of gravitation and with various types of levers do we begin to think of the student in these subjects as a scientist. In order to claim recognition as a statistician what qualifications must the student have and how can be acquire them? The would-be statistician must learn the sources of reliable data and how to secure them; how to think in quantitative terms; how to

use with caution and accuracy the data when gathered; how to present the results in clear and accurate form; and how to bring to light the relations of cause and effect. He is not merely a philosopher but his philosophy is continually being subjected to the test of fact and method.

What are the specimens, what the tools and methods with which the statistician works in his laboratory? The careful countings of phenomena in nature, in social, economic and political life furnish him specimens, the meaning of which he seeks to understand. The population at each year of age has been gathered, the value of exports and imports, the number of deaths, births and marriages, the price of commodities and the wages of labor, the number of accidents in industry, the amount of unemployment, the number of crimes, the number of infant deaths, the amount of family expenditure for items of food, clothing and shelter, the number of school children who are behind their proper grade in school,—and a thousand other data,—a bewildering array of facts which he seeks to reduce to intelligible form and to so arrange that relations of cause and effect become evident. He need not trouble with arithmetical processes for calculating machines and tables do these for him, but his methods are of very great importance if the true is to be distinguished from the false.

The first task is to secure complete and accurate data, what appears to be a fact may be just the opposite. It becomes the business of the statistician to work out such methods of gathering facts that complete and accurate information will be secured. Schedules of questions are of the greatest importance and experiment always shows some kinds of questions to be good for statistical purposes and others inadequate; some questions that bring forth correct answers and others incorrect; some that invite a frank statement and others that lead to evasion. The laboratory may bring together all sorts of schedules with their results and show the student what constitutes a good schedule for particular purposes. Incidentally, the student may construct and try out a schedule for himself. Complete information as to the nature of the problem to be investigated is soon shown to be essential in order to ask the right sort of questions and in order to make them definite and clear.

But masses of figures mean little to the busy person who seeks their help in solving a specific problem. The business of the statistician is to so arrange the data collected as to render them intelligible. He classifies the population by age-groups and finds that the native population have a very different age-grouping from the foreign-born. The latter are mainly adults. If he observes that a large number of crimes have been committed by immigrants he does not forget that they are mainly within the age-groups where crime is most frequent and that the only fair way to compare the crimes of foreign and native-born is by similar age-groups. He classifies deaths by cause and age-groups and then he finds that the purity of the milk supply is of paramount importance to the health of babies and that tuberculosis is a disease of adults in the most productive years of life, which makes it necessary to wage war on bad working conditions, dusty trades, bad housing and poor ventilation. He puts his wage-earners into groups according to the amount of wages, and, from year to year, is able to observe whether the standard is rising or falling for the masses of workers. He tabulates deaths as a rate per 1,000 of the population from year to year and thus measures the sanitary progress of the community and the control over the death-rate. He shows that the death rate in some occupations is

much lower than in others, and this fact becomes the basis of special mortality tables in life insurance. He tabulates accidents in industry and compares the numbers that suffer accident at various hours of the day, or in various days of the week, or he finds how many hours each victim of accident was employed before the accident occurred, or how long experience he had in the trade, in order to aid in determining the cause and responsibility for accidents. Thus he seeks to make the meaning of the mass of data clear by reducing to averages and rates the confusing details and then throwing the significant facts into comparisons to show cause and effect.

The statistician may eliminate all details and the original data by putting his results in the graphic form, but, obviously, to put into his hands the power of replacing actual numbers in detail by averages and to allow him to transfer these significant results to diagrams and curves, is to give great opportunity to mislead the reader unless most careful and conscientious methods are used. There are a half dozen different methods of taking an average, each appropriate under particular conditions and in special problems. The student must learn these methods and when each may be used with safety. There is a method of measuring variation from an average or type and thus showing the relative homogeneity of the data; there is a method of showing the relations between groups of facts, there is a right and wrong way of presenting wage and price statistics. Merely to tell the student that these methods exist or even to explain how they are used, is similar to explaining to the young surgeon all about the human body and then, without practice, to set him to perform a difficult operation. The statistician must learn these methods and the laboratory seeks to offer him the opportunity to learn them by working over actual material gathered from a great variety of sources.

One other function the laboratory performs. It brings together the data from many state bureaus and many private investigations—data gathered by persons of varying intelligence and scientific equipment, for a great variety of purposes administrative and social. It shows the student the limitations of these data for purposes of comparison. In New York City attendance at school does not mean the same as it does in Pittsburgh, therefore, we cannot compare attendance in the two cities from data collected under a different definition of attendance. Wages in one state are classified by fifty-cent groups, but in another state the average of all workers in the specific occupation is given. Obviously, wages in the two states cannot be compared.

Prison statistics are kept in one state largely for administrative reasons, enumerating the persons committed to prison or found in prison on a certain day, without specifying the crime or nationality or other details of interest to the student of criminality, while another state records all these details. The student of criminality is baffled when he seeks grounds of comparison for the two states. Accidents are reported in one state if they are of a certain degree of seriousness; in another state all accidents are reported. It is impossible to compare results in the two states. The value of uniform methods and schedules for collecting statistics becomes clear to the student who sets about to use these results in the laboratory and finds himself unable to reach results which could be arrived at exactly if the data were comparable. Thus the laboratory becomes an educative force to promote uniformity of record keeping.

Thus, the statistical laboratory offers training in methods of gathering,

analyzing, and presenting statistical data and gives practice in the use of these methods. The laboratory method tends to dispel the current idea that statistics are dry and uninteresting facts used in haphazard fashion to prove or disprove any sort of proposition. It dignifies the use of statistical data by showing how facts for one purpose may cease to be facts when used for another purpose, and how method is always of supreme importance. The laboratory furnishes to the student a knowledge of the chief working sources of information of their reliability, and of the particulars in which these sources are capable of being improved.

ROBERT EMMET CHADDOCK,
Columbia University (Director of the Statistical Laboratory.)

Prison Statistics for 1910.—A preliminary statement of prison statistics for the year 1910 was issued on January 1 by Director Durand of the Bureau of the Census, Department of Commerce and Labor. It was prepared under the supervision of Dr. Joseph A. Hill, chief statistician of the division of revision and results, who has had charge of the work. The figures are subject to revision later, as a few institutions are delinquent in furnishing complete returns, but this is not likely to affect materially either the totals or ratios herein.

The prison population of the United States January 1, 1910, was 113,579, and the number of commitments to prisons or other penal institutions during the year 1910 was 479,763. These figures include every class of offense, from vagrancy to murder in the first degree. They also include cases in which the offender was committed to jail or prison for the non-payment of a fine. For this and other reasons the totals and ratios which are shown for the different states are not to be regarded as measuring the criminal tendencies of their inhabitants.

The ratio of prisoners to population on January 1, 1910, was 125 to 100,000, and the ratio of commitments to population during the year 1910 was 522 to 100,000. Thus it appears that, at the beginning of the year 1910, one person out of every 800 in the United States greeted the New Year in prison or jail, and that during the year 1910 for every 190 persons in the total population there was one commitment to prison or jail for a longer or shorter period, ranging from one day to a life sentence. It should be remembered, however, that the number of commitments does not represent that many different persons, because the persons committed include many "repeaters" who went to jail more than once during the year 1910.

The table by states brings out the fact that the number of prisoners in proportion to population was smallest in South Dakota—48 per 100,000 population—and largest in Nevada—353 per 100,000 population. In Illinois there were 92 prisoners per 100,000 population. The number of commitments in proportion to population was smallest in North Carolina—123 per 100,000 population—and largest in Arizona—2,992 per 100,000 population. In Illinois there were 496 per 100,000 population. It by no means follows, however, that the population of either Arizona and Nevada is wicked or criminal beyond that of all other states, or that the population of either South Dakota or North Carolina is pre-eminently good, or any more law abiding than that in states where the ratios are higher.

The number of commitments to jail or prison is determined in no small degree by the statutes and the practice of the courts relative to the punishment

of minor offenses. Offenses which in some states would be punished by a few days in jail, may, in other states, be punished by a fine.

The figures are also affected by the degree of vigilance which the police and the courts exercise in arresting and punishing lawbreakers. Again there are more laws to break in some communities than in others. This is generally the case in urban as compared with rural communities, since many local ordinances are found in force in cities which are inapplicable or unknown in country districts.

As soon as these returns have been classified with reference to the offenses for which committed, the statistics will have more significance as an indication of the prevalence of crime in different communities. The complete report, which the census will ultimately publish, will give the prisoners and commitments classified, not only with reference to offenses, but with reference to nationality, age, duration of sentence and other features. R. H. G.

MISCELLANEOUS.

Committees of the Institute. A. System of Recording Data Concerning Criminality.—"Investigation of an effective system for recording the physical and moral status and the hereditary and environmental conditions of delinquents, and in particular of the persistent offender; the same to contemplate, in complex urban conditions, the use of consulting experts in the contributory sciences."

Harry Olson, 917 City Hall, Chicago (Chief Justice of the Municipal Court of Chicago), Chairman.

James R. Angel, Chicago, Ill. (Professor of Psychology in University of Chicago).

William Healy, Winnetka, Ill. (Director of the Juvenile Psychopathic Institute).

Willard E. Hotchkiss, 31 West Lake Street, Chicago (Professor of Economics in Northwestern University, and Inspector of the Federal Census Bureau).

John Koren, 25 Pemberton Square, Boston, Mass. (Special Agent for the Federal Census Bureau).

D. P. MacMillan, 7 Dearborn Street, Chicago, Ill. (Director of Child Study Department, Board of Education).

Robert H. Gault (Assistant Professor of Psychology in Northwestern University), Evanston, Ill.

Frank L. Randall, St. Cloud, Minn. (Superintendent, State Reformatory of Minnesota).

Frederic W. Sears, Burlington, Vt. (Instructor in Neurology in the University of Vermont and Neurologist and Psychologist to the State Penal Board).

B. Insanity and Criminal Responsibility.

Edwin R. Keedy, 31 W. Lake Street, Chicago (Professor of Law in Northwestern University), Chairman.

Albert C. Barnes, 1223 E. 50th Street, Chicago (Judge of the Superior Court).

Archibald Church, Chicago (Professor of Nervous and Mental Diseases and Medical Jurisprudence in Northwestern University),

Walter Wheeler Cook, Chicago (Professor of Law in the University of Chicago).

William S. Forrest, 1016 Ashland Block; Chicago (Attorney).

Adolf Meyer, Baltimore (Professor of Psychiatry in Johns Hopkins University).

William E. Mikell, Philadelphia (Professor of Law in the University of Pennsylvania).

Harold N. Moyer, 103 State Street, Chicago (Physician).

Morton Prince, 458 Beacon Street, Boston (Former President of the American Neurological Society and the American Psychopathological Society. Professor of Neurology in Tufts Medical College).

W. A. White, Washington (Superintendent of Government Hospital for the Insane).

C. Judicial Probation and Suspended Sentence. "Investigation of the most desirable methods of establishing and extending the allied measures of adult offenders' probation and of suspended sentence, including the consideration of the results of such measures as hereto used."

Wilfred Bolster, Boston (Chief Justice of the Municipal Court of Boston), Chairman.

Roger N. Baldwin, 911 Locust Street, St. Louis (Former Secretary of National Association of Probation Officers).

Charles A. De Courcy, Boston (Justice of the Supreme Judicial Court).

Homer Folks, New York (Chairman of the State Probation Commission).

Louis W. Marcus, Buffalo (Judge of the Supreme Court).

Edwin Mulready, Boston (State Deputy Commissioner of Probation).

Henry N. Sheldon, Boston (Justice of the Supreme Judicial Court).

Arthur W. Towne, Albany (Secretary of the State Probation Commission of New York and of the National Probation Association).

Robert J. Wilkin, 211 Clinton Street, Brooklyn (Judge of the Juvenile Court).

D. Organization of Courts. "Investigation of the possibilities of the unification of the state and local courts, so as to do away with the burdensome cost of transcripts, bills of exceptions, writs of error, and so forth, allowing the appellate tribunal to pass upon and use the same papers and the original evidence and comments used at the trial and to take further evidence on formal matters or matters not controvertible for the purpose of upholding judgments."

Stephen H. Allen, Crawford Building, Topeka, Kan. (Former Judge of the Supreme Court).

Samuel C. Eastman, 80 N. Main Street, Concord, N. H. (Attorney).

Albert M. Kales, Chicago, Ill., 31 W. Lake Street (Professor of Law in Northwestern University).

Austin W. Scott, Iowa City, Ia. (Dean of the Law School of the State University and Former Instructor in Criminal Law in the Harvard Law School).

E. Criminal Procedure. "Investigation of the feasible methods of (1) simplifying pleadings in criminal cases, (2) eliminating unnecessary technicalities in the procedure of appeals and reversals of judgment in criminal cases."

William N. Gemmill, Chicago (Judge of the Municipal Court), Chairman.

A. C. Bachus, City Hall, Milwaukee (Judge of Municipal Court).

James J. Barbour, 1601, 69 W. Washington Street, Chicago (Former Assistant State's Attorney for Cook County).

Orrin N. Carter, 1022 Court House, Chicago (Chief Justice of the Supreme Court).

John J. Healy, Room 1228, 29 S. La Salle Street, Chicago (Former State's Attorney for Cook County).

William E. Higgins, Lawrence, Kan. (Professor of Law in University of Kansas).

Francis E. Hinckley, 1045 First Nat'l Bank Building, Chicago (Attorney).

Jesse Holdom, 534 First Nat'l Bank Building, Chicago (Former Judge of the Circuit Court and Illinois Appellate Court).

John D. Lawson, Columbia (Dean of the Law School, University of Missouri).

Alexander E. Matheson, Janesville, Wis. (Attorney).

Vroman Mason, Vroman Building, Madison, Wis. (Former District Attorney).

Edgar L. Master, 140 Dearborn Street, Chicago (Attorney).

John S. Miller, 1522 First Nat'l Bank Building, Chicago (Attorney).

Harry Olson, 917 City Hall, Chicago (Chief Justice of the Municipal Court and Former Assistant State's Attorney for Cook County).

James H. Wilkerson, Federal Building, Chicago (United States District Attorney).

E (a). Special Committee on Drafting a Code of Criminal Procedure.

William E. Mikell, Philadelphia (Professor of Criminal Law, University of Pennsylvania), Chairman.

Edwin R. Keedy, 31 West Lake Street, Chicago (Professor of Law in Northwestern University).

Robert Ralston, Philadelphia (Judge of Common Pleas Court No. 5, of Philadelphia County).

Harlan F. Stone, New York City (Dean of the Law School of Columbia University).

F. Indeterminate Sentence and Release on Parole. "Investigation of the most advisable methods of establishing and extending the measure of parole and of indeterminate sentence, including a consideration of (1) the results of such measures as hitherto used, (2) the organization of boards of pardon and of parole, and (3) the correlation of such boards and officers with courts and court methods."

Edwin M. Abbott, Philadelphia (Member of the Pennsylvania Legislature for the 16th District, and Drafter of the Pennsylvania Indeterminate Sentence Act of 1911), Chairman.

Joseph P. Byers, 13 Central Avenue, Newark, N. J. (General Secretary of the American Prison Association).

Albert H. Hall, Minneapolis, 722-6 New York Life Building (Chairman of the American Prison Association Committee on Law Reform).

Charles R. Henderson, Chicago (Professor of Sociology in the University of Chicago, Former President of the American Prison Association and of the Eighth International Prison Congress).

Edward Lindsey, Warren, Pa. (Associate Editor of the Journal of the Institute).

Robert Ralston, 1326 Spruce Street, Philadelphia (Judge of the Common Pleas Court No. 5 of Philadelphia County).

Samuel W. Salus, Philadelphia (Senator in the Pennsylvania Legislature, and Former Assistant District Attorney of Philadelphia County)

Samuel G. Smith, St. Paul (Clergyman, and Author of Treatises on Penology).

Richard Sylvester, Washington (Chief of the Metropolitan Police, and President of the International Police Association).

Henry Wolfer, Stillwater, Minn. (Warden of the State Prison, Stillwater; Member of the State Board of Parole).

G. Crime and Immigration. "Resolved, That there be appointed a committee on crime and immigration, whose duty shall be to investigate and report upon the subject of the alien and the courts with special reference to treaty rights; status under various state laws; procedure, including interpreters, appeals, etc."

Gino C. Speranza, 40 Pine Street, New York City (Counsel to the Consul-General of Italy at New York, Member New York State Immigration Commission 1908-09), Chairman.

Miss Jane Addams, Chicago (Superintendent of Hull House).

Miss Francis A. Kellor, 22 E. 30th Street, New York City (Chief Investigator, New York Bureau of Immigration and Industries).

Frederic R. Coudert, No. 2 Rector Street, New York City (Lawyer).

Charles Cheney Hyde, 112 W. Adams Street, Chicago (Professor of International Law in Northwestern University Law School.

General Committees. (1) Committee on Cooperation with Other Organizations. "Resolved, That the president be empowered to appoint delegates to arrange for coöperation with the following organizations for the purpose of avoiding duplication of work and of combining effective effort, and to attend on behalf of this organization, but without expense to it, their sessions: International Prison Congress, l'Union International de Droit Penal, American Bar Association, American Prison Association, International Congress of Criminal Anthropology, National Conference of Charities and Correction, American Political Science Association, National Conference on Uniform State Laws, and other kindred organizations."

W. O. Hart, 134 Carondelet Street, New Orleans (Louisiana Commissioner on Uniform State Laws), Chairman.

Nathan W. MacChesney, 30 N. La Salle Street, Chicago (Former President of the Institute, and Illinois Commissioner on Uniform State Laws).

Joseph P. Byers, 13 Central Avenue, Newark, N. J. (Secretary, American Prison Association).

Arthur W. Towne, Capitol, Albany, N. Y. (Secretary, National Probation Association).

Stephen S. Gregory, Chicago, Ill. (President, American Bar Association).

Dr. Geo. H. Simmons, 535 Dearborn Street, Chicago (Secretary, American Medical Association).

Adolf Meyer, Johns Hopkins University, Baltimore, Md. (President American Psychopathological Association).

Hastings H. Hart, 105 E. 22d Street, New York (Director, Russell Sage Foundation).

Richard Sylvester, Chief of Police, Washington, D. C. (International Police Association).

Prof. W. W. Willoughby, Johns Hopkins University, Baltimore, Md. (Secretary, American Political Science Association).

Franklin H. Giddings, Columbia University, New York (President, American Sociological Society).

Walter B. Pittsburg, University of Michigan, Ann Arbor, Mich. (President, American Psychological Society).

Samuel M. Lindsay, Professor of Social Legislation, Columbia University, New York (President, Academy of Political Science).

Clark Bell, 39 Broadway, New York (Former President of the Medico-Legal Society).

D. L. Cease (Secretary, National Civic Federation).

(2) **Committee on Translation of European Treatises on Criminal Science.** "Whereas, It is exceedingly desirable that important treatises on criminology in foreign languages be made readily accessible in the English language.

"Resolved, That the president appoint a committee of five, with power to select such treatises as in their judgment should be translated, and to arrange for their publication, without expense to the Institute."

John H. Wigmore, Chicago (Dean of the Northwestern University School of Law), Chairman.

Ernst Freund, Chicago (Professor of Law in the University of Chicago).

Edward Lindsey, Warren, Pa. (Associate Editor of the Journal of the Institute).

Maurice Parmelee, Columbia (Associate Professor of Sociology in the University of Missouri).

Roscoe Pound, Cambridge, Mass. (Professor of Law in the Harvard Law School).

William W. Smithers, Philadelphia (Secretary of the Comparative Law Bureau of the American Bar Association).

(3) **Committee on Criminal Statistics.** "Whereas, There is a widespread and increasing popular desire thoroughly to understand and perfect the criminal law of our country, and a growing belief that some of our methods are capable of improvement, and

"Whereas, Full and reliable information regarding the actual administration of the criminal law, both federal and state, is necessary to wise and efficient legislation and administration.

"Resolved, That this conference urge upon Congress to provide for the collection, through the agency of the Census Bureau, of criminal and judicial statistics covering the entire United States as early as practicable.

"Resolved, That it is the sense of this conference that legislation ought to be enacted by the several states, making it the duty of prosecuting attorneys, magistrates and justices of the peace to report annually to some state central officer, preferably the attorney-general, or the secretary of state, full information regarding the administration of the criminal.

"Resolved, That a committee of six be appointed to report on the present methods of keeping criminal judicial records of the courts of the several states and territories, as well as of the federal courts, and to recommend an adequate and uniform system of recording and reporting such statistics.

"Resolved, That the system formulated by the above-mentioned committee, when approved by a subsequent conference, be recommended to the several states and to the Congress of the United States for their consideration and adoption."

John Koren, Boston (Special Agent of the Census Bureau), Chairman.

Charles A. Ellwood, Columbia (Professor of Sociology in the University of Missouri).

Willard E. Hotchkiss, Chicago (Professor of Economics in the Northwestern University, and Inspector of the Federal Census Bureau for Chicago).

Edward Lindsey, Warren, Pa. (Associate Editor of the Journal of the Institute).

Edward J. McDermott, Louisville, Ky. (Lieutenant-Governor of Kentucky).

Robert Ralston, 1326 Spruce Street, Philadelphia (Judge of the Common Pleas Court No. 5 of Philadelphia County).

Frank L. Randall, St. Cloud (Superintendent of the Minnesota State Reformatory).

Louis N. Robinson, Swarthmore, Pa. (Lecturer on Sociology in Swarthmore College).

Eugene Smith, 49 Wall Street, New York (President, New York Prison Association).

(4) **Committee on State Societies and New Membership.** The purpose is to stimulate interest in and organize branches in the various states, and to advise means of increasing the membership of, and adding to, the list of those persons who have taken special interest in the study of criminal law and criminology.

Oliver P. Rundell, Madison (Assistant Professor of Law, University of Wisconsin), Chairman.

Henry M. Bates, Ann Arbor (Dean of the Law School of the University of Michigan).

Charles A. De Courcy, Boston (Justice of the Supreme Judicial Court).

Alexander Hadden, Cleveland (Judge of Cuyahoga County Probate Court).

Oliver A. Harker, Urbana (Dean of the Law School of the University of Illinois).

George W. Kirchwey, New York City (Professor of Law, Columbia University).

William E. Higgins, Lawrence (Professor of Law, University of Kansas).

Charles A. Ellwood, Columbia (Professor of Sociology, University of Missouri).

Nathan William MacChesney, 30 N. La Salle Street, Chicago (Former President of the Institute and Illinois Commissioner on Uniform State Laws).

William E. Mikell, Philadelphia (Professor of Law, University of Pennsylvania).

Frederic W. Sears, Burlington, Vt. (Physician).

Meaning of Acquittal in the Triangle Fire Case.—The following is from the *New York Times* for December 30, 1911:

"Whoever reads with care the charge of Justice Crain will not only understand why the jury in the Triangle fire case brought in the verdict it did, but will also see that it would have been extremely difficult, if not impossible, for it to reach any other conclusion.

"The acquittal does not mean, as too many will assume, that in the opinion of the jurymen nobody was to blame for this hideous disaster—that it was an unavoidable accident, or what used to be called more often than nowadays "a mysterious dispensation of Providence," and as such to be accepted with resignation. What the verdict really means, as we understand it, is that the two men, Harris and Blanck, were not guilty as charged.

"Between this and not guilty at all there is much more than a technical difference, and for what a large part of the public unquestionably considers the unsatisfactory termination of the trial it is at least possible to place the responsibility not on the court or the jury, but on the mistake of the prosecution in indicting the proprietors of the Triangle Company for a crime which they obviously had no intention to commit. The natural inclination, after a fire that cost 146 lives, was to seek the imposition of a commensurate penalty upon those who, obviously, were more directly to blame for it than anybody else, but in this case, as in so many of an analogous character, the attempt to do more than the circumstances, as viewed by the law, would warrant, resulted in the doing of nothing and a complete miscarriage of justice.

"To convict Harris and Blanck as indicted it was necessary to prove that the fatal door was locked by their orders and that they were personally connected with and responsible for the death of the one particular victim who had been selected from many as the basis of the manslaughter charges. This was not done, and it hardly could have been done. Yet the result of the fire is in itself conclusive proof that the conditions in the factory were desperately bad—that necessary precautions had been habitually neglected. For this the proprietors were clearly to blame, and had they been merely accused of violating the factory laws, either they would have been sent to jail or heavily fined, or else the inadequacy of those laws to serve their intended purpose would have been so plainly demonstrated as to have brought about an immediate reform.

"As it is, nothing has been accomplished except a seeming confirmation of the already too widespread distrust of courts and juries." R. H. G.

The Recent Prohibition Movement in the South.—The pamphlet of 24 pages, reviewed below, contains an address by William Holcombe Thomas before the National Municipal League, Richmond, Va., on November 13-16, 1911. It is reprinted from the *Montgomery Journal,* of November 16, 1911. The address, as printed, attempts to show that the prohibition movement was: (1) an economic question of labor and security; (2) a moral question, strongest in country life; (3) and lastly, a state-wide political question.

Some account is given of the early steps of the movement, showing that, as the South is largely agricultural, the population is scattered, and specially with its negro elements is confronted with difficulty of police control. Necessity for prohibitive action was thus recognized soonest in country life, and only later did the interest spread towards the city. Conviction grew that the drinking man, white or black, was unfitted for toil and was a menace everywhere. The unit of reform was first the precinct or township, but it was quickly enlarged to take in the city and the state. In the wider field, the movement encountered the opposition of foreign or political elements, and the problem of adoption or enforcement was distinctly deepened, but the tide set in and there was no stopping it till the South as a broad belt from Virginia

across Texas, whether by local option or by constitutional or statutory procedure, became practically prohibition territory.

Interest attaches to the present status. It is understood that the movement has suffered a measure of reaction, and evidence is not altogether wanting. Texas and Florida refused by a small majority to adopt a constitutional amendment, and Alabama, after failing to make prohibition organic, went so far as to repeal its statute law. Enforcement has always been difficult in populous centers, and the discovery was used to discount the entire cause. But the movement maintains its own with the results. Local option is employed where the larger measure was impracticable. Outside the large cities, prohibition prevails almost universally, and the testimony is that the enforcement is about as thorough as with other laws. Tables are introduced with showing results by comparison between wet periods and dry, and they uniformly express the advantage of prohibition. Comparisons are also introduced between wet states in the North and dry states in the South, and no doubt is left of the southern superiority.

Permanent results are cited as advantages. One is the educational value of prohibition campaigns. Agitation and election are appeals to intelligence and civic responsibility, and the need is strong in the South, with its Democratic excess and consequent political indifference.

The discovery is made, too, clearer than ever before, of the difference between urban and rural ideals. The democracy of the city is difficult to harmonize with the democracy of the country outside, and the problem arises to determine which shall take precedence of the other. It is the interest of fixing the local option unit, and agreement is necessary to final policy.

Further, the problem of determining the mutual relation of state and national authorities has been brought to the front. At present there is the conflict of methods, and before dry territory can be maintained as such, the coöperation of the general government must be secured. How long it will take prohibition, working out from the community and county and state, to cover the nation is an interest too involved for the word of any but an inspired prophet.

The pamphlet on the whole is illuminating and assuring, and it is recommended to any who care to be informed upon its subject.

HOUSTON W. LOWRY, Akron, Ohio.

The Moral Limits of Prosecutions for Theft.—In *Il Progresso Del Diritto Criminale,* November-December, 1911, are five interesting articles dealing with the history and present treatment of European penal law from a psychological point of view, and taking up also some interesting practical questions of sociological weight. Emanuele Carnevale treats of the moral limits to which a prosecution for theft should be pressed. The question of the *de minimis* has always been of interest to Continental jurists. A man who stole from hunger is not indictable in most European countries. This article considers exceptions similar to this from a psychological point of view, and concludes that certain minor thefts should not be indictable, because the general consciousness recognizes no *mala mens* in such takings.

JOHN LISLE, Philadelphia.

Penalty for the Attempt.—An interesting article in *Il Progresso Del Diritto Criminelle* for November-December, 1911, is "La Pena pel Tentativo" by Luigi Masucci. He takes up the question of whether the penalty for the attempt should be the same as the penalty for the completed crime. From a psychological point of view it seems that his article is unanswerable. The classic or objective school—Flangieri—had no difficulty with such a question, because they treated crime as an objective phenomenon. Salielles, and the new subjective school, overthrew this theory for some time, using as their argument the fact that the subjective elements of the crime are the same whether it is successful or not. Romagnosi and his school could not go quite so far, and divided attempts into those in which an obstacle was the immediate cause of the failure, and those in which some obstacle caused the criminal to give up his purpose. Masucci returns to the teaching of the classic school, but bases his reasons entirely upon social psychology. He says that the concrete and practical idea of punishment is to satisfy the man injured by the crime, to reform or intimidate the criminal, to discourage his possible imitators, and to satisfy the legitimate demands of the public conscience. All of these objects are better obtained by differentiating the attempt from the crime. If a single penalty is imposed upon the attempt and the crime, the human mind is so constituted that the injured party will think that he is not getting justice when the crime is committed. The criminal and his possible successors in the case of an attempt are intimidated and discouraged by the failure which more than makes up for the difference in the penalty, and the public conscience is not so affected by the act which fails as the act which succeeds. It is right, therefore, Masucci concludes,—and it seems to us well-founded,—that there should be a distinction in penalty between the attempt and the crime, and that Salielles and Romagnosi were wrong in their conclusions. To prove this, he cites the popular belief in the injustice of the laws which have not allowed such a distinction.

JOHN LISLE.

The Public Defender.—There is a growing sentiment favorable to the authorization of a Public Defender for those unfortunates who may be cited before the courts, charged with violations of the criminal laws, and who are unable financially to secure such advice or assistance from a legal source as would insure to them avoidance of delays and fair and impartial presentation of their cases. The advocates of this innovation would perhaps gain for the cause a more general endorsement and support, however, would they refrain from bitter denunciation and too harsh criticism of certain class lawyers and the police in proclaiming their interests for the change.

It is far more politic, to say the least, to kill with kindness than to kill with a club. The defiant attitude in attempting reforms prompts defiance on the part of the opposition, and the breach is maintained, if not widened.

R. A. S.

"Fair Play."—This is to call attention to No. 1 of Volume I of "Fair Play," a weekly magazine which made its first appearance on January 13. It is owned and published by The Public Weal Publishing Company of New York. The editors of this journal propose to investigate any instances brought to their attention wherein it shall appear that men or women are victims of evil accom-

plished in the dark and give them the benefit of all the publicity that the circulation of this new journal will permit. The present number contains an article by Arthur H. Ham, director of the Division of Remedial Loans of the Russell Sage Foundation on "The Campaign Against the Loan Sharks"; "Immigration Abuses and Treaty Rights," by Marcus Braun, author of "Questioned Documents"; "Mauling an Under Dog," by Frank Marshall White, and other articles of interest to the student of social problems. Such a journal should have a wide influence. R. H. G.

The "National Municipal Review."—It affords a great deal of satisfaction to notice the appearance of a new periodical published quarterly by the National Municipal League. The *National Municipal Review* is under the editorial care of Clinton Rogers Woodruff of Philadelphia, secretary of the National Municipal League and editor of the proceedings of the League, with whom are associated Charles A. Beard of Columbia University, author of "American Government and Politics" and "Introduction to English Historians"; John A. Fairlie of the University of Illinois, author of "Municipal Administration," "National Administration of the United States," etc., and Arthur Crosby Luddington of New York City, author of "American Ballot Laws," "The Present Status of Ballot Laws in the United States," etc.

In the introduction to this first number the editors state the aim of the review. It is offered to the public "in response to a long-continued and widely-expressed desire for a thoughtful discussion of city problems and a careful chronicle of municipal affairs * * * * it will aim to present fairly and impartially the municipal programs of all parties and organizations and to have technical matters treated by qualified experts * * * * The editors will accord full treatment to municipal functions and welfare enterprises as well as to ballot laws, charters and bureaus of municipal research."

The interests of this review at many points must touch upon those of the JOURNAL OF CRIMINAL LAW AND CRIMINOLOGY and these two journals should be mutually coöperative and helpful.

The table of contents of the first number is as follows: "American Municipal Tendencies," by Clinton Rogers Woodruff; "An Effective Municipal Government," by William Dudley Foulke; "Anti-toxin for Municipal Waste and Corruption," by Richard Henry Dana; "City Government by Commission," by Richard S. Childs and others; "Economy and Efficiency in Health Administration," by Selskar M. Gunn; "Private Houses and Public Health," by John Ihlder; "The Tammany-Gaynor Charter," by Lawrence Arnold Tanzer; "The Levy Election Law in New York," by Albert S. Bard; "Inter-City Milk Inspection," by M. N. Baker; "What Boston-1915 Is Doing," by James P. Munroe; "The Pageant of Thetford," by William Chauncy Langdon; "An International Municipal Bureau," by W. D. Lighthall; "Reports and Documents," by John A. Fairlie; "Current Municipal Legislation," by Arthur Crosby Luddington; "Events and Personalia," by Charles A. Beard. R. H. G.

The New York State Bar Association.—The New York State Bar Association was held in the City of New York on Friday and Saturday, January 19 and 20. Senator Root, the president of the Association, delivered the opening address. Secretary of State Knox delivered the annual address.

The topic selected for discussion at the meeting is "The Reform of Pro-

cedure in the Courts of New York," and several papers, each treating of a separate phase of the subject, will be presented by well-known members of the bar. C. Andrade of New York will read a paper on "Commencement of Action," George Gordon Battle and Joseph M. Proskauer will submit a paper on "Preparation for Trial and Trial Practice," Neal Dow Becker and Everett P. Wheeler of New York will read papers on "Judgment" and "Appeals," "Satisfaction of Judgment and Supplementary Proceedings" will be presented by Henry A. Forster of New York, J. Newton Fiero of Albany will discuss "Special Action and Special Proceedings" and the two surrogates of New York County, John P. Cohalan and Robert Ludlow Fowler, will take up "The Practice in Surrogate's Court," Governor Simeon E. Baldwin of Connecticut will present a paper entitled "How Civil Procedure Was Simplified in Connecticut," and Canada will furnish a speaker in the person of Mr. Justice Riddell of the King's Bench, Toronto, whose subject will be "Procedure in Ontario." R. H. G.

The Kansas State Bar Association.—The Kansas State Bar Association met in Topeka on January 30 and 31, 1912. Harry B. Hutchins, President of the University of Michigan, delivered the annual address on the subject, "Respect for the Law." In addition the following subjects were presented: "The Law and the People," by William Osmond; "Government by Jury," by H. C. Sluss; "The Legislative Flood," by F. Drumond Smith; "Public Officials and the Public," by Lee Bond; "The Status of State Control or Public Service Corporations," by Robert Stone; "Human Rights Versus Property Rights," by J. W. Gleed. A special discussion of the Revision of the Statutes was led by J. T. Lafferty. Among other committee reports was that on "Crimes and Criminal Procedure," read by William E. Higgins, chairman of the committee. R. H. G.

Annual Meeting of the District Judges of Kansas.—The Fifth Annual Meeting of the District Judges of Kansas was held in Topeka on Monday, January 29, in the Supreme Court room. The following program was offered:

General Discussion of Amendment of Laws, led by C. W. Smith, Stockton; Defects of the Crimes Act, subject opened by A. S. Foulks, Ness City; Improvement of the Criminal Code, G. L. Finley, Dodge City; Impaneling a Fair Jury Speedily, W. H. Thompson, Garden City; Can the Thronging of Prurient and Morbid Spectators be Prevented at Trials where Grewsome, Salacious or Spectacular Evidence is Expected? R. L. King, Marion, and Dallas Grover, Ellsworth; Limiting Special Questions, Oscar Raines, Oskaloosa; Default Divorces, J. W. Finley, Erie; Paroling Offenders, E. E. Sapp, Galena.

In addition to the subjects just referred to the following questions were suggested for general discussion:

How may the court be satisfied of the genuineness of a written waiver of service or entry of appearance by an absent party without attorney? Is a mere signature enough? Or should it be formally acknowledged or verified?

May the court in a divorce case attempt to decree as to children beyond the jurisdiction?

Is the criminal law weak for want of clear definitions of crimes?

Should Kansas, for minor offenses punishable only by fine, add the "contravention" of Europe to our division into felony and misdemeanor, with the

citation substituted for the warrant and the civil procedure largely for the criminal?

Is the waiver of a peremptory challenge in a criminal case a final acceptance of all jurors already in the box?

Should punitive damages go into the public treasury?

Is it wise to ignore a defendant's failure to testify?

Should the state and the defendant have an equal number of peremptory challenges?

Should the court prescribe rules for its clerk?

How far should the same attorney be allowed to represent both plaintiff and defendant, e. g., in partition?

The district judges of Kansas are organized with Judge J. C. Ruppenthal of Russell as chairman and Professor W. E. Higgins of the University of Kansas as secretary. The organization is influential in the state of Kansas. In 1911 the committees of the Bar Association and of the Legislature consulted with the judges who compose the organization on all matters directly concerning the judicial and procedure. R. H. G.

Public Recognition of the Work of the Institute of Criminal Law and Criminology.—It is gratifying to observe that in the public press frequent references have occurred to the work of the American Institute of Criminal Law and Criminology which has been accomplished, especially through its committee which has been investigating the relation of the criminal to the insane under the chairmanship of Professor Edwin R. Keedy. Heretofore most of the discussions of crime and insanity have been one-sided. They have represented either the view of the medical man or of the lawyer. The report in question, however, takes up all sides of the problem. It is this characteristic which appears to have appealed to the practical sense of the public. The *Chicago Evening Post,* under date of November 21, and several other publications give special notice to the report. In concluding its comment the *Chicago Evening Post* says: "The committee seems to have cleaned away an immense amount of rubbish from the subject and in its simplicity it seems to recommend a reform which is well within the reach of this generation." R. H. G.