POPULAR GOVERNMENT

Volume One January, 1931 Number 1

Popular Government

VOL. I. JANUARY, 1931 No. 1

Permit to enter as second class matter applied for.
Published Quarterly.

THE UNIVERSITY OF NORTH CAROLINA

ALBERT COATES, *Editor*

Contents

THE CONVICT'S QUESTION

In Appreciation

Three years ago I told a friend I was planning to center my efforts on the teaching of criminal law administration in the University Law School. A surprised, even a suspicious look came into his eyes. And he told me that late in the eighties when Walter Henry thought of leaving the practice to write a book on criminal law, Judge Shipp remarked that any man worth his salt could learn all there was to be known about it in three weeks. This story has gone the rounds of the bar and still reflects the lawyer's attitude: that there is little or nothing to the criminal law, that the criminal practice is something for a lawyer to make a living out of until he is able to make a living out of something else, that the criminal courts merely furnish a take off for young lawyers in their first flights. Perhaps this explains the plight of criminal law enforcement now.

At the start I found the materials available for a course in criminal law administration were limited by academic tradition and scholarly convenience to legislative enactments and court decisions. Small fractions of the law in action. Too slender ties to bind the classroom to the courtroom, the law school to the law office, the teacher of criminal law administration to the administration of the criminal law. They needed supplements.

I found them, unwritten—in Judges and Prosecuting Attorneys of our Supreme, Superior and Intermediate Courts, in Sheriffs, Coroners and Chiefs of Police; in the personalities and practices of officials who represent the law and its enforcement to the people. In them the law takes form and color. They have been my teachers—helpers in my teaching.

Together we found the administration of criminal law interlocked in our present governmental structure with the administration of all law. This expanded our studies to include the greater in order to complete the lesser. It led to a new course in governmental institutions and processes. It widened the circle of cooperating officials to include mayors, managers and attorneys, aldermen and commissioners, of city and county; legislators, the executive secretaries of the county government and state tax commissions, the attorney general and other state officials; the Governor offered his co-operation.

These men and more have helped, are now helping in the effort to bring the classroom out of the cloister; to make it the focal point, the clearing house of experiences of governmental administrators and experiments in governmental administration as they develop; to make it an agency for the transmission of our steadily accumulating governmental experience alike to successive administrations of governmental officers and to successive generations of college students. In these efforts I have found the place of the classroom in a democracy.

Out of these cooperative efforts, centering in the classroom, has grown the movement recorded in this first issue of this journal devoted to the study of our governmental institutions and their processes. I have merely drawn its outlines. They have breathed into it the breath of life. To them this issue is dedicated in appreciation.

ALBERT COATES

Chapel Hill
December 20, 1930

THE CONVICT'S QUESTION

"No people can ever become a great people by exchanging its own individuality, but only by encouraging and developing it. We must build on our own foundation of character, temperament and inherited traits. We must not repudiate, but develop. We must seek out and appreciate our own distinctive traits, our own traditions, our own deep-rooted tendencies and read our destiny in their interpretation."

—CHARLES B. AYCOCK

I.

In the files of the Governor of North Carolina there is a letter which runs like this:

> "Dear Governer:
> The Judge gave me 10 years in the penitentiary for killing a man. I am working right next to a fellow who killed a man and got six months for it. I want to know how come. I want to know if that is justice."

This question cuts through our theory of judicial discretion, into our theory of judicial organization, and questions the workings of both. It reaches back of the courtroom and involves the agencies for detection and detention of offenders. It reaches beyond the end of the trial and involves the agencies for punishment, pardon and parole. In short, it searches the foundations of our penal policy and the structure of our machinery for the administration of criminal law. In its farthest reaches it involves the structure and the interrelationship of government in city, county and state. I invite you to join me in examining this penal policy, this administrative machinery, this governmental organization as it affects the enforcement of the criminal law.

II.

OUR PENAL POLICY

The analysis of our penal policy calls for a discussion of the changing types of punishment throughout our history,

the changing control of punishment, the changing policies of punishment, and the unsolved problem.

Changing Types of Punishment

The types of punishment imposed in North Carolina have changed radically in the course of our history. The Charter from the Crown *in 1663* and the Concessions in 1665 prescribed (1) fine, (2) imprisonment, (3) banishment, (4) corporal punishment, (5) mutilation and (6) death. The pillory, stocks and whipping post, the branding iron and the amputation knife, the jail, the gallows and the stake symbolized the state's exactions for the violation of its laws. *In 1854* the punishment of death was limited to 20 crimes. Mutilation was practically abandoned. Corporal punishment was rapidly disappearing. The punishment of the pillory was reserved for crimes that were "infamous or done in secrecy and malice or with deceit and intent to defraud." *In 1868* the pillory, stocks and whipping post went out of the picture. The Constitution prescribed three types of punishment: (1) fine, (2) imprisonment with or without hard labor, and (3) death, which was limited to four offenses; an amendment *in 1875* specifically sanctioned new types of penal machinery in the chaingang and the convict camp. These are the punishments in use today.

This transition in types of punishment may be partially illustrated with the crimes of counterfeiting, horse-stealing and maiming.

Counterfeiting. *In 1774* counterfeiting was punishable by death; *in 1779* by 3 hours standing in the pillory, nailing the right ear to the pillory and cutting it off, 39 lashes on the bare back, branding the right cheek with the letter "C" and the left cheek with the letter "M," one inch

long and ¾ inch wide, imprisonment at the court's discretion not exceeding one year, forfeiture of one-half of the offender's goods and chattels, land and tenements; *in 1872* by imprisonment in the State Prison or County Jail from 4 months to 10 years and a fine in the discretion of the Court; and today the same with the added possibility of a road sentence.

Horse-stealing. Prior to 1786 horse-stealing was punishable by death; *in 1786* by one hour of standing in the pillory, a public whipping of 39 lashes on the bare back, nailing both ears to the pillory and cutting them off, branding on the right cheek with the letter "H," ¾ inch in length and ½ inch in breadth, and on the left cheek with the letter "T"; *in 1883* by imprisonment from 5 to 60 years in the State Prison; *in 1930* by imprisonment from one to 20 years, varied by a term on the roads.

Maiming. The doctrine of an eye for an eye has in our history expressed itself in the successive exactions of death for an eye, 39 lashes on the bare back and 2 hours in the pillory for an eye, 60 years of the offender's life for an eye, 10 years in jail for an eye, 4 months in jail and a term on the roads for an eye.

Changing Control of Punishments

Within these limited types the control of punishment has oscillated between the Legislature and the Courts with the balance of power steadily gravitating to the Courts.

Legislative Control. In the early history of our race crimes were fitted into a barometric scale of minute gradations and to these minute gradations a corresponding scale of penalties attached. In Ethelbirt's Dooms it was provided: (1) Let him who breaks the chin bone pay for it with 20 shillings;

for each of the four front teeth, 6 shillings; for the tooth which stands next to them, 4 shillings; for that which stands next to that, 3 shillings; and then afterward for each, a shilling. (2) If a thumb be struck off, 20 shillings; if the little finger be struck off, 11 shillings; if the shooting finger be struck off, 8 shillings; if the gold finger be struck off, 6 shillings; if the middle finger be struck off, 4 shillings; if the thumb-nail be struck off, 3 shillings; and for every finger-nail, a shilling.

In the early history of our state this tendency is still apparent. For some crimes 20 lashes were meted out, for others 30, for others 40. And then by degrees, according to the legislative notions of the seriousness of the offense, might be added the pillory for one or two hours, branding in one or both cheeks, mutilation by cutting off of one or both ears, or the hand and so on up the scale to the penalty of death.

It hangs over to this day when we exact money payments ranging from the costs of the case to a fine of $5, $500 or $5000; prison sentences ranging from one day, to 30 days, to 30 years of the offender's life, and finally all of his life in the penalty of death—new words sung to the same old tune. Thus does our present penal policy show the traces of its origin. Thus does it acknowledge itself as the spiritual heir of the Saxon Dooms. And in fact it is the Saxon Dooms with the four front teeth knocked out, the shooting finger shot off and the finger nails all gone.

Judicial Control. The Legislature which undertook thus minutely to fit the punishment to the crime was rarely satisfied with the fit. It lowered the penalty for a crime because it was so severe it overshot the mark. It then raised it back to its original level of severity because it was so lenient that

it undershot the mark. Reaction against this severity then carried it lower than ever and an equal and contrary reaction carried it higher than ever on the returning pendulum swing. In the single crime of counterfeiting this alternating legislative rhythm between the poles of leniency and severity wrought 12 changes in 50 years. Human conduct refused to yield to rule of thumb. Human passions would not run in legislative moulds. Life would not "go to and stay put."

Numerous avenues of escape were found from this Procrustean bed. The preamble to a statute in 1786 complains: (1) officers and persons injured refuse to prosecute, (2) juries are slow to convict, (3) the executive is quick to pardon. To these practices of prosecutor, jury and executive may be added (4) the judicial technique of hedging crimes about with technicalities in the effort to safeguard the lives of citizens from the undue severities of the law. These escapes from the legislative straight jacket were the forerunners of judicial discretion.

From Colonial days judicial discretion was authorized in an ever increasing number of misdemeanors. The Legislature which had prescribed the exact number of lashes for a given offense, no more and no less than 39, began to fix the limits merely—not more than 39 nor less than 9. The exact number to be laid on within those limits was left to the discretion of the Judge. In addition to this discretion within the limits of a single type of punishment the Legislature gave him a choice of many types. It allowed him to put the offender in the pillory, or in the stocks, or at the whipping post,—to brand him in the cheek, or to cut off his ears,—to impose all or any in his discretion.

In 1868 judicial discretion was extended to the graver felonies. The Legislature which had fixed the penalty of

death for 20 crimes changed it to imprisonment for all but 4, fixed the limits of imprisonment at not less than 5 nor more than 60 years, and left the term of imprisonment within those limits to the discretion of the Judge. The limits of his discretion within a single type of punishment thus were greatly broadened, but the choice of types was limited to fine, imprisonment, with or without hard labor—in the jail or the chaingang or the penitentiary.

By 1894 the judiciary had found an avenue of escape from even these broadened legislative limits in the practice of suspending sentence. This was a device for doing away with punishment altogether upon certain conditions. The range of its uses may be illustrated by cases where sentence has been suspended on a prostitute on condition that she leave town for two years, on an offender against the Prohibition Law on condition that he go to church every Sunday for 12 months, on a Peeping Tom on condition that for six months he take his wife with him on every trip down town at night.

By 1919 this practice of suspending sentence on condition had developed into a full fledged system of probation for youthful offenders. The limitations of the suspended sentence were transcended. The specific limits on specific types of punishment disappeared. The specific types of punishment were themselves obliterated. The very name of punishment was stricken from the vocabulary. And in the last analysis the training school replaced the jail. Today the economic liability of the chaingang, the jail and the penitentiary, even in the absence of moral conviction, invite the extension of probation into the ranks of adult offenders.

Present status. Thus the ever lengthening edge of judicial discretion has steadily cut its way through judicial confine-

ment in legislative straight jacket, to judicial discretion within legislative limits, to judicial escape from legislative limits into comparative freedom through the medium of suspended sentence and probation. Today it means, in concrete terms, that a judge may for a violation of the prohibition law give one man a nominal punishment and another 2 years on the county roads; for larceny, one man 30 days in jail and another in an aggravated case 10 years; for manslaughter, one man 4 months and another 20 years. It means that under the guise of suspended sentence he may for larceny and violations of the liquor law do away with punishment altogether; and that even in cases of manslaughter he may reach the same result by hiring the defendant to his father. It means that the law has become an avowed respecter of persons. The judge who was once required by law to treat offenders alike is today allowed by law to treat them differently.

Changing Policies of Punishment

Thus by evolution a revolution has been wrought.

It is reflected in the *changing purposes of punishment:* from the satisfaction of the desire for private vengeance, to the satisfaction of the desire for public justice, to the satisfaction of the desire for social protection, to the satisfaction of the desire for reformation of the offender in so far as it is compatible with the protection of society; from revenge, to retaliation, to punishment, to treatment.

It is reflected in the *ever lessening brutality of punishments:* in the shift from the stake, to the gallows, to the electric chair, as methods of inflicting death by due process of law, in the limitation of the death penalty to four crimes and the growing tendency even in those four cases to restrict

it to negroes and poor white folks; in the shift from the amputation knife, to the branding iron, to the final disappearance of mutilation; in the shift from pillory, stocks and whipping post to penitentiary, chaingang and jail, to the present practice of suspending sentence on condition of good behavior. The records of our Superior Courts for the last 30 years show, says Roy Brown, a steady decline in the percentage of prison sentences and fines imposed and a corresponding increase in the use of the suspended sentence. For the 4-year period from 1922-26 less than 21% of offenders convicted were sent to the county roads and convict camps; less than 20% received fines; less than 4% were sent to the State Prison; and less than 2% were sent to the county jails. In the same period 25% of all sentences were suspended; in the year 1928-29 30%; and 1930 finds it evolving into a limited system of probation, working we do not know how well.

It is reflected in the *changing sources of punishment:* from the individual, to the crown, to the legislature, to the judge, to the psychiatrist in the offing. As long as the King was merely the mouthpiece of the Lord—an automaton to reflect God's will on earth—his hands were tied. When he found he had a will of his own the tables turned. The voice of the King became the voice of God. His hands were freed to fashion punishment as he pleased. The judge became the mouthpiece of the King. When the people supplanted the king, the voice of the people became the voice of God. The voice of the legislature became the voice of the people. Its hands were freed to fashion punishments through legislative fiat. The judge became the mouthpiece of the legislature. As legislative fiat gave way to judicial discretion and the voice of the judge became the voice of the people, the judge became the mouthpiece of himself.

The weakness of divine control of punishments, of kingly control and of legislative control was that it stood too far back of the scenes to see the differences which make men different, to see the circumstances which alter cases. The Goddess of Justice was blindfolded, literally groping in the dark in her efforts to fix the punishment for a crime before the crime was committed, before the criminal was caught, before the circumstances surrounding the crime or criminal were known. The shift to judicial control carried the Goddess of Justice from the legislator's seat to the judge's bench. It allowed her to look through the judge's eyes into the face of the prisoner at the bar. It gave her a chance to get acquainted with the crime, the criminal and the circumstances before she pronounced her judgment. In short, it pulled the blindfold off. And it is only natural that for a season she should be a little blinded by the light.

It is worth noting that the King continued in many respects to do the will of the Lord long after he found he had a will of his own; that the legislature continued in many respects to follow the penal policy of the Crown long after it was free to fashion a penal policy for itself; and that the judiciary followed in legislative footsteps long after it was privileged to make tracks of its own. Thus a residuum of truth was carried over from one notion to another and interlocking experiences of successive generations lengthened into the continuity of a tradition which casts its subtle spell upon us yet.

Nowhere is this hangover more apparent than in the shift from legislative fiat to judicial discretion in our own history. The lawyers who controlled the courts were of the same background, training and perspective as the lawyers who controlled the legislature. It was, therefore, natural that notions controlling in legislative halls should continue to influence

strongly the pronouncements from the bench. And they did. In 1878 our Supreme Court was announcing the doctrine that the trial court judge in fitting penalties to offenders should be governed in the exercise of his discretion by the penalties previously prescribed by legislative fiat; that if two years had been the maximum penalty imposed before the days of judicial discretion no circumstances could justify a higher penalty afterward; that if the judge in his discretion should go beyond the previous legislative chalk line it was "excessive, cruel and unusual punishment" contrary to the Constitution. Even in our own day the undertow of tradition has more than once pulled the judiciary into line with the traditional legislative technique, a technique which assumed the ultimate validity of ancient punishments and relied on the simple device of variations in their stringency. Thus the dead past has refused to bury its dead. Thus the great hand of tradition reaching out of the unknown through kingly council chambers and legislative halls into the court-room rested for the moment on the shoulder of the judge with an arresting power. Thus kings and councils and courts have moved within a rhythm greater and more compelling than their own.

The Unsolved Problem

As we look backward over the path we have traveled, we see that through the swing of the centuries we have many times been caught in our own catchwords—that we have beguiled ourselves into believing we had solved the problem of crime (1) *by restating the purpose of punishment:* substituting for the words "private vengeance" the words "public justice," for public justice the words "social protection," for social protection "individual reformation" with a tendency to use "rehabilitation" instead—for the word "revenge" the word "retaliation," for retaliation "retribution," for retribu-

tion "deterrence," for deterrence "treatment"; (2) *by changing the types of punishment:* from the stake, the gallows, and the electric chair, to the pillory, stocks and whipping post, to the penitentiary, chaingang, jail and fine, to the suspension of all punishment on promise of good behavior; (3) *by shifting the immediate control of punishment*: substituting the "crown" for the "individual," the "legislature" for the crown, the "judge" for the legislature, and now the "psychiatrist" for the judge. We have been at times forgetful that though a "rose by any other name doth smell as sweet" it doth smell no sweeter.

The significance of these changing slogans is that they reflect and forecast changing points of view and changing methods of approach which bring us to a better grappling point with age old problems. When we cut through phrases to the facts we find the age old problem still unsolved, the ancient question still unanswered, bobbing up through the centuries in changing forms but with unchanging meanings: If the purpose of punishment is the satisfaction of the desire for private vengeance, what kind and degree of punishment will satisfy it? If the purpose of punishment is satisfaction of the desire for public justice, what kind and degree of punishment will satisfy it? If the purpose is protection of society, what will protect it? If reform of the individual, what will reform him?

On every day of Criminal Court this problem rears itself before the judge in the person of every convict in concrete terms like these: What is the end to be achieved by punishment of this person? Within the limited types of punishment at my disposal, which is most likely to achieve the end in view: a fine? a jail sentence? a road sentence? a suspended sentence? If it is a fine, how much—$5 or $50 or $500? If

a jail or road sentence, how long—30 days or 2 years or 10? If a suspended sentence, on what condition and what are the guarantees that the condition will be performed?

Here are strange and perplexing questions which Blackstone does not answer, on which statute and decision throw little light. They push the limits of legal attention back of the moment when the policeman's hand falls upon the offender's shoulder and beyond the moment when sentence is pronounced upon him; back of the murder into the murderer, back of the theft into the thief, back of the violation of the liquor law into the appetite which causes it; beyond the beginning of a prison term and the environment of prison walls and prison camps, into the effect of this environment on the offender's life, to the completion of the sentence and the offender's restoration to the community and the influences of normal human life. They bring the causes of crime and the consequences of punishment out of the shadows of sentimental speculation into the focus of pertinent legal inquiry. They bring the problem of the social control of human behavior out of the atmosphere of academic theorists and parlor sophisticates into the grim tenseness of court room scenes where in the person of the prisoner at the bar it calls insistently for answer.

Is it too much to hope the answer may be found?

For centuries the stars spelled out the fortune teller's superstitions only. Tycho Brahe began to observe them in their courses, to note their relative positions as they moved across the heavens and to write down what he saw. From these recorded observations Kepler found an order in the skies and wrote down the laws by which the heavens moved. Newton found the explanation of these laws in gravitation and Ein-

stein is adding to the completeness of the explanation. Today we predict with a certainty approaching the absolute the movement of every single star. On the basis of these predictions mariners sail the seas in safety, Lindbergh steers his course to Paris, and all of us learn to a second the time of day. The astrologer's superstition has become the astronomer's science.

For centuries men called upon the philosopher's stone to help them turn earth's baser metals into gold. From these crude beginnings came discoveries of the differing physical properties in the make-up of the earth. Out of this jumble of elements order began to appear as men found they could arrange them in a periodic table according to their atomic weight: hydrogen at the bottom, uranium at the top. Dalton explained this order in his theory of the atom. On this theory of a law abiding universe men have predicted undiscovered elements where gaps existed in the periodic table and have sought and found them. Thus Madame Curie discovered radium and brought it to the bedside of cancer suffering patients. Thus the elements of the earth have been harnessed to the service of mankind. Thus the ancient philosopher's stone, still lingering with us in the rabbit's foot, has yielded to scientific experiment. The alchemist's magic has become the chemist's science.

Three hundred years before the time of Christ, Plato and Aristotle debated the nature and the structure of intelligence. After them for near two thousand years men tried to settle by disputation the number of teeth in a horse's head, and never took a count. At the Royal Observatory at Greenwich in 1795 two men reported the occurrence of the same phenomenon at different times, noticed over a number of trials the

difference was constant and found they could correct the "constant error." They stumbled on the "personal equation." In 1847 Helmholtz was exploring this personal equation in experimental tests of the reaction speed of different individuals to given stimuli. In 1904 Binet began the experiments leading to intelligence tests and the concept of mental age. Today on the basis of the scores of intelligence tests and the hours of study educators have predicted with 90% accuracy the grades of students in college courses in advance. The insurance companies have discovered that 20% of the automobile drivers have 50% of the automobile accidents and they are using the theory of the intelligence tests in the effort to find out in advance the accident prone drivers so as to write their disqualifications into insurance policies. The Boston Street Railways have cut their accidents almost in half by special training for their accident prone conductors.

If out of astrology astronomy could come, if out of alchemy chemistry could come, is it too much to hope that out of psychiatry with its many blind and futile gropings may come the beginnings of a science of human behavior? That clues from which men have concluded man is only a blank sheet of paper for environment to write upon, a hereditary trait, an economic urge, a magnified endocrine gland, a continuous series of physilco-chemical reactions, that character is determined by the bumps on the head and criminality by the slant of the jaw,—that these clues may yet lead to discoveries which will throw new and needed light on the problem of the judge as on the bench he sits in judgment on his fellow men—fresh facts to feed into his mental processes in the crucial moment between verdict and judgment when he must attempt to answer the question society thrusts

upon him in the person of every convicted criminal: Is there any treatment which will deter this man or, through him others, from a career of crime and, if so, what is it? If we fail at this point we have failed everywhere.

Meanwhile in the absence of any common standard and technique of application, discretionary punishment presents an as yet uncharted field where the private notions of each judicial officer hold public sway—from the lowliest justice of the peace to the most superior judge of our Superior Courts, they have the force if not the sanctity of law. At its worst it abandons the judge to the sway of whim or fancy or caprice and at its best it offers him his conscience for his guide.

When the English Chancellor took his conscience for his guide in relieving against the rigid strictness of the common law the bar objected that the Chancellor's conscience might vary as the length of the Chancellor's foot to the uncertainty and insecurity of human rights. Succeeding Chancellors answered this objection by working out a common standard as the conscience guide and so brought equity into the great tradition of the law.

Today as the criminal court judge takes his conscience for his guide in the administration of the discretion which enables him to relieve against the rigid punishment for crime, a convict asks him why it is that for killing a man he is imprisoned for ten years and his cell mate for six months. To tell him he was tried before a hard-boiled judge and his companion before a soft-boiled judge is not a satisfying answer to his question. To tell him in general terms that there were "differences in the cases" is not enough in the absence of knowledge as to what those differences were. The legal profession is called on for an answer—in terms of law

and not of chance. Perhaps the same tenderness for human life which for generations has lent to judges an astuteness for technicalities which would save it from the harsh exactions of a medieval law, will lend them an equal astuteness in utilizing all the resources of modern science and human experience to discover in this darkened field of the criminal law the countenance of justice, to rescue this uncharted realm of judicial discretion from the uncertainties of chance and bring it within the bounds of the law. The legal profession was never called to a more daring adventure or to a more romantic quest.

III.

OUR LAW ENFORCING MACHINERY

We can start upon this quest from where we are with what we have got, how we got it and how it is working today. We work chiefly through the judge, the judicial organization, the procedural rules, the police, the chief executive and the public.

The Judge

The pivotal point in our penal policy is the judge. Our law enforcing machinery puts upon him the responsibility of fixing punishment in his discretion.

The legislature when it gave him this discretion did not prescribe the factors which should guide him in its use. It recognized the fact that there are differences which make men different and circumstances which alter cases; that not only differences in circumstances but differences in men under similar circumstances may lay the basis for differences in judgments. But it did not tell the judges what those differences were. It did not tell them the differences which would justify a sentence of two years on the county roads for one convicted of violating the liquor law, and a suspended

sentence for another; twenty years for manslaughter by one man and four months for manslaughter by another. It did not tell them the effect that different types of punishment would have on different men. It left them to learn from experience, sometimes painful, the truth of Mr. Justice Holmes' remark that "general propositions do not decide concrete cases." It left them to figure out the concrete cases for themselves.

The difficulty of this task is indicated in the statement of a great psychiatrist three years ago—Dr. Thomas W. Salmon, Brigadier General at the head of the neuro-psychiatric service of the American Military Forces in the World War—quoted by Frankfurter and repeated by Moley in *Our Criminal Courts*:

> "For more than twenty-five years I have been studying motives of conduct, thought and feeling, with the enormous advantage of witnessing the cruel experiments which nature performs in the production of mental development and distortions of mental life, yet tomorrow, if I were appointed a judge in a trial court in New York State by some misguided governor, my fear of inadequacy would not deal nearly so much with my almost complete ignorance of law but with the great defects remaining in my knowledge of human behavior. I should not say, 'Who am I to attempt to administer justice when I know nothing of the Laws?' What I would say is, 'Who am I to administer justice when I have an incomplete knowledge of the deep springs of conduct and the motives of human beings?'."

There must be times when every judge in our Superior Courts echoes this sentiment.

But the necessities of procedure will not wait upon the accidents of learning. A defendant cannot be held in jail or in bail while scientific procedure learns how to control his glandular secretions and rid the world of crime. Here and

now judgments must be pronounced. In the absence of adequate knowledge we must stumble along with a little less certainty than the country doctor who did not know what was wrong with his patient nor how to cure him of his immediate illness and so gave him something to throw him into fits because he knew he could cure fits.

The judge is expected to tackle this tremendous task with the aid of legal machinery devised for a totally different purpose. Our machinery for the administration of the criminal law was and is organized around and centered upon the single issue of the defendant's guilt or innocence of the crime charged. The efforts and energies of the judge presiding at the trial, the attorneys representing the prosecution and defense in the examination of witnesses and the presentation of the case to judge and jury, the sheriffs and the police who have gathered the evidence on which the prosecution is based,—the efforts and the energies of all of these have been focused upon the answer to the single question: *guilty or not guilty?*

These agencies are more or less equipped to gather and present the facts bearing upon this issue. But no one will seriously contend that the investigations which the attorneys for the prosecution and the defense now make and are now equipped to make in the preparation of a case for trial furnish the judge with the impartial and far reaching information he needs in the formulation of his sentence. No one will seriously contend that our sheriffs and police, who in the main gather the facts on which the trial is based, have sensibilities tuned to catch the subtle rhythms in human lives and conduct which may furnish the judge with clues on which a wise and scientific treatment of convicted persons may be

based. Yet these are the agencies with which the law supports the judge. With what results?

I have before me copies of the record cards of five offenders with the longest criminal records in the courts of each of seven North Carolina cities. Here is the card with the longest criminal record and the widest variety of punishments. It is the record of a young white man, beginning at the age of 12 and ending at the age of 33.

6-17-07	Vagrancy	Judgt. sus. without cost
11-18-07	Trespass	Judgt. sus. without cost
4-18-08	Drunk	$1.00
1-5-09	Injury to Property	Judgt. sus. without cost
1-5-09	Assault deadly w.	$5.00
11-8-09	Nuisance	$2.00
12-10-09	Larceny	Bound over Superior Court
12-10-09	Larceny	Bound over Superior Court
12-28-12	Larceny	Dismissed
1-13-13	Assault deadly w.	$2.00
9-2-13	Drunk	Judgt. sus. without cost
6-8-14	Assault	Nol pros with leave
8-6-14	Drunk	$5.00
12-29-14	Nuisance	Judgt. sus. without cost
6-8-15	Assault	Judgt. sus. without cost
6-18-15	Crime against Nat.	Bound over Superior Court
4-25-16	Drunk	$5.00
8-4-16	Drunk	$10.00
8-14-16	Assault	Cost
10-2-16	Nuisance	$10.00
10-2-16	Nuisance	Cost
11-3-16	Assault	Dismissed
11-17-16	Assault deadly w.	30 days
11-17-16	Trespass	30 days
2-12-17	Assault	$5.00
11-15-17	Drunk	$2.00
12-1-17	Drunk	Cost
5-21-19	Assault	$5.00 and cost
6-3-19	Drunk	$5.00 and cost
8-4-19	Drunk	$5.00 and cost
8-11-19	Drunk	Cost

3-3-20	Drunk	Cost
4-7-20	Drunk	Cost
5-24-20	Drunk	Cost
6-5-20	Assault on woman	Dismissed
7-26-20	Drunk	30 days, capias
8-23-20	Drunk	20 days, capias
10-11-20	Drunk	Cost
3-21-21	Assault deadly w.	8 months on roads
8-13-21	Grand larceny	Bound over Superior Court
10-31-21	Assault on woman	30 days
10-31-21	Assault on woman	30 days
10-31-21	Assault on woman	30 days
10-31-21	Drunk	30 days
3-6-22	Drunk	30 days
9-9-22	Drunk	30 days, appeal
10-27-22	Drunk	30 days s. s. leave county
2-3-23	Drunk	30 days, capias
3-12-23	Drunk	Cost
4-3-23	Assault deadly w.	18 months, appeal
4-3-23	Drunk	30 days
5-15-23	Assault	30 days, appeal
7-21-24	Drunk	30 days
9-2-24	Drunk	30 days s. s. leave county
11-9-25	Drunk	$10 and cost
12-7-25	Drunk	$10 and cost
12-26-25	Drunk	3 months s. s. leave county
12-28-25	Gambling	Cost
1-25-26	Drunk	30 days on roads
2-24-26	Assault deadly w.	90 days on roads
6-29-26	Trespass	Judgt. sus. without cost
8-24-26	Drunk	$25 and cost
9-7-26	Vio. Pro. Law	$25 and cost
9-7-26	Drunk	Judgt. sus. without cost
11-22-26	Vio. Pro. Law	$25 and cost
11-26-26	Drunk	30 days s. s. leave 3 years
12-28-26	Drunk	30 days s. s. leave 3 years
12-28-26	Vio. Pro. Law	30 days s. s. 3 years
1-31-27	Drunk	30 days s. s. 3 years
3-3-27	Drunk	30 days s. s. 3 years
3-22-27	Drunk	30 days
4-19-27	Drunk	30 days
6-10-27	Drunk	15 days

6-25-27	Drunk	15 days
7-11-27	Drunk	30 days s. s. 3 years
7-12-27	Drunk	30 days
8-29-27	Drunk	30 days s. s. 3 years
10-17-27	Drunk	30 days
10-20-27	Drunk	30 days
2-4-28	Drunk	30 days s. s. 3 yrs.
2-13-28	Drunk	15 days
3-2-28	Drunk	30 days s. s. 3 years
3-6-28	Drunk	15 days
4-12-28	Drunk	30 days s. s. 3 years
5-11-28	Drunk	30 days s. s. 3 years
5-19-28	Drunk	30 days s. s. 3 years
5-22-28	Drunk	30 days
7-19-28	Drunk	30 days s. s. 3 years
8-3-28	Drunk	30 days
9-4-28	Drunk	30 days s. s. 3 years
9-6-28	Drunk	30 days
10-2-28	Drunk	30 days
10-26-28	Drunk	30 days
11-17-28	Drunk	(Died from the effects of drink while awaiting trial 11-17-28.)

On this record the prosecuting attorney makes the following comment:

> "As I have told you before, this was one of my choice cases. He loved me like a brother always and when he was sober (a rare occurrence) he was a pretty good sort. He died one night, as I often told him he would, from an overdose of bay-rum. During the War he had an excellent record as a soldier, having a Croix de Guerre for bravery. Bay-rum gets them all in the long run."

He added further that all of these offenses grew out of intoxication, and that the intoxication grew out of the drinking of bay-rum. The defendant could not afford the price of whiskey, but four bottles of bay-rum at ten cents a bottle never failed to carry him where he wanted to go. Would it have

cost the city more to send this man to Keely Institute? Would such a treatment have cured him of his thirst? Would depriving him of his thirst deprive him of a legitimate pursuit of happiness and so be violation of his constitutional rights?

The other records tell the same story in a less spectacular fashion. In these cases all the types of punishment allowed by law have been imposed, varying amounts of each type, and varying combinations of all types and amounts, and they haven't worked! When judges try all the tricks the law allows and see the futility of their handiwork it is no wonder that at times they throw up their hands and query, "What's the use?" and then hand out routine sentences resulting in a penal policy, cut and dried and dead. Here is an illustration in the record of a colored woman twenty-three times before the Court for drunkenness:

1st offense—$2.00 and cost
2nd—cost
3rd—nol pros
4th—30 days
5th—30 days
6th—30 days
7th—nol pros
8th—30 days
9th—30 days
10th—30 days
11th—30 days
12th—30 days
13th—30 days
14th—30 days
15th—$5.00
16th—Cost
17th—30 days
18th—30 days
19th—30 days
20th—30 days
21st—30 days

22nd—30 days
23rd—30 days

Thus we get no better fast. Common sense is an uncommon thing.

No one can look at or listen to that record without feeling that a penal policy may not only fail to deter an offender from further criminal acts but that it may also without actually legalizing crime, nevertheless become a license to commit it!

Any business persisting in such a policy, after its failure has been over and over again brought home with all the stinging freshness of demonstrated truth, is predestined to bankruptcy. The courts are no exception to this rule. They cannot afford to continue upon a penal policy which has humanized and formalized vengeance into a futile game of tit for tat. As a social policy it is undesirable, however much it may be desired. Society in getting even always gets behind.

These are extreme cases. But they are significant enough to invite investigation of our punitive system as a whole in an effort to find the extent to which we are hitting what we are shooting at. Such an investigation will show us where we stand and what we stand on and maybe furnish a little light for future steps.

We need to study the penal policy of every judge: the types of punishment he imposes in different types of cases and the pointedness with which he acts. We need to compare the penal policies of all the judges and thus turn their very diversity to advantage. The court records will furnish us with partial information. Even more informing will be the personal statements of a number of judges who have undertaken to formulate for us in writing the factors which guide them in the exercise of their discretion. We need to follow up each separate sentence to find out how it works. We need to follow

each individual as he moves from prison walls into society and study the problem of adjustment which he faces there. We need to find out if the treatment he has received has helped or harmed him, if it has tended to push him into or pull him out of a criminal career, if it has made him a friend or an enemy of organized society.

These investigations may lead to the same sort of disillusionment which came to a Chapel Hill mother some years ago when she took her five year old son to witness a "moral" picture showing the Romans throwing the early Christians to the lions in the arena. After they were all thrown over, while the lions were eating them, with obvious enjoyment, the little fellow began to whimper and then to cry quite audibly. When the mother thought the moral had sufficiently sunk in she bent over to comfort him: "Don't cry, son, don't cry. Tell Mother what makes you cry." He sobbed in answer: "Mamma, yonder's a lion that hasn't got a Christian!" A former Pardon Commissioner, a man who went into the job with all the traditional preconceptions of a lawyer, a man whose level headed judgment no one will deny, has intimated that many prisoners come out of their confinement with the same heartfelt sob! To the extent that this is true society is simply cutting off its nose to spite its face. *We need to find the facts.* It is a condition and not a theory which confronts us.

These inquiries are the roots from which a constructive penal policy may grow. They will supplant our shaking basis of fiction with a solid basis of fact. They are being planted now in scattered places here and there: (1) in Roy Brown's study of the chaingang and its operations in North Carolina; (2) in his study, nearing completion, of the dispositions of criminal cases in our Superior Courts over a period of thirty

years; (3) in a study by the State Board of Charities and Public Welfare of the types of persons going to the electric chair; (4) in the activities of Edwin Bridges as Commissioner of Pardons in securing jobs for prisoners released on parole, pardon, or termination of sentence, and enlisting the aid of Civic Clubs and other agencies in helping these prisoners make their readjustments to normal life; (5) in the increasingly rigorous supervision of the health and welfare of prisoners in jails, chaingangs, and prison camps under the joint authority of the State Board of Health and the State Board of Charities and Public Welfare; (6) in the activities of judges who are with increasing frequency calling in welfare officers and other agencies to conduct impartial but unofficial investigations to aid the Court in arriving at a proper judgment; (7) in the intimate knowledge of the after effects of our penal policy as it works itself out in the lives of individuals and communities, which is accumulating all the time in the experience of welfare officers and of those lawyers who as pardon commissioners have opportunities for observation no other lawyers have.

To these efforts we are adding the further efforts to work out the history of all our penal and corrective institutions in so far as it is contained (1) in the statutes, decisions and constitutions; (2) in the reports of officers and in the unreported practices of officials charged with management and control; (3) in the experiments in penal policy under way throughout the state by city, county and state authorities; (4) in the problems created by separate and independent city, county, state control of prisons, prisoners and prison policies. In this work we have the active aid of a number of the younger members of the bar throughout the state working in cooperation with the officials concerned and interested.

Our machinery for the administration of punishments must be reorganized to include these informal and uncertain investigations in the due and regular process of the law—either through the rebuilding of the agencies for the investigation, detection, arrest and trial of offenders, or through the addition of competent agencies of probation, or through the delegation of partial responsibility for the treatment of offenders to a specially organized body, or through a combination of all these methods. Such a reorganization may not prove to be as costly as the cost in time, energy, and money of 94 successive investigations, detections, arrests, trials, convictions and punishments of a single offender, when every punitive failure is a social blunder as well as a financial loss.

The Judicial Organization

These efforts to work out a consistent and constructive penal policy are bound up inescapably with the structure and machinery of our judicial organization. In the absence of a common law to go by each judge is perforce a law unto himself. The lawyers know it. The records show it. A study of the disposition of criminal cases in the Superior Courts for the last thirty years reveals that one judge has given suspended sentences in as high as 35% of the cases before him and another in as low as 9%; that one judge has imposed fines in as high as 26% of the cases before and another in as low as 8%; that one has imposed road sentences in as high as 19% and another in as low as 7%.

In the absence of adequate knowledge on which to base a consistent penal policy, in the absence of adequate machinery for getting at essential and intimate facts about a defendant on which a wise judgment may be pronounced, it is inevitable that arbitrary results will flow

from the most reasonable intentions of a single judge, that differing punishments may be imposed for similar crimes committed under similar circumstances by personalities between which distinctions may exist without a difference.

Multiply one by twenty-four and we have twenty-four Superior Court Judges, each pursuing his own individual policies in different parts of the state at the same time. It is inevitable that judges with different attitudes toward crime and punishment will impose radically different sentences on cases substantially the same. That this is done is common knowledge.

To the twenty-four Superior Court Judges add more than a hundred Judges of Intermediate Courts which have sprung up throughout the state in the last thirty years, free to follow policies of their own, and the situation becomes complex. Add at least one hundred Juvenile Court Judges practically unfettered in their discretion and the complexity increases. Add the unknown hundreds of Justices of the Peace with limited but tremendously important criminal jurisdiction in the petty misdemeanors which make the greater part of the infractions of our laws, and complexity becomes confusion. Rotate the twenty-four judges of the Superior Court throughout the state at regular intervals and confusion itself becomes confounded: (1) No Superior Court Judge has a fair chance to develop a consistent and well founded penal policy—in one county today and in another tomorrow—he cannot follow up his work and judge of its effectiveness in terms of its results. (2) No community has a fair chance to develop a consistent penal policy—today its courts are held by a judge whose judgments are characterized by severity and tomorrow by a judge whose judgments are characterized by leniency—no one can say which is right, and, what is more significant, no one is likely

to find out. (3) That this encourages continuances and delays is illustrated by a single instance in recent years where one judge was sent to a community to hold a special term of criminal court against the wishes of the members of the bar, and disposed of scarcely a dozen cases in trials that were long drawn out, while in a subsequent term of court around two hundred cases were disposed of by pleas of guilty and submissions to charges of a lesser offense. (4) Judges of Intermediate Courts are hampered in the development of a consistent penal policy by this rotation in the system of courts operating above their heads to which offenders have free access through the medium of appeals.

This situation does not argue the abandonment of the principle or the practice of rotation. It simply argues the necessity of a guiding standard of penal administration under the rotation system. It argues for the adaptation of our judicial organization to enable the judiciary to make a unified and concerted attack upon an admittedly pressing problem, to eliminate unintended frustrations and cross purposes. It calls for a thorough study of the theory and practice of our judicial organization in its jurisdiction of criminal causes. This study will carry us back to the formative days in our Colonial beginnings, to the clashes between the executive, the legislature and the courts—threaded by the contests between the Colonists and the Crown, to the hangover into our own day of attitudes engendered in those conflicts. It will require a detailed study of the expansion of the judicial system under the pressure of increasing work (1) from the early years of our history to 1868, when the trial of some criminal cases was in the hands of a single justice of the peace, of others in the hands of three or more justices constituting the County Court, of others in the hands of the

Superior Court; (2) to the Constitution of 1868 which provided for courts of justice of the peace at one extreme, for Superior Courts at the other, and for Inferior Courts between them for the trial of petty misdemeanors in cities and towns; (3) to the Constitution of 1875 which expanded the system of intermediate courts and paved the way for hosts of city and county recorder and general county courts; (4) to the present day when hundreds of Courts of Justice of the Peace, more than a hundred Intermediate Courts, at least a hundred Juvenile Courts, and twenty-four Superior Courts exist side by side, operating under opposing theories, with differing powers and overlapping jurisdictions. It will involve an intimate study of the actual workings of each of these systems—the relation of each unit to the system of which it is a part and the relation of the systems to each other. In short, it calls for a critical evaluation of the fundamental changes in theory which have slowly and almost imperceptibly accompanied the equally basic changes in practice which have been going on—an evaluation in the light of present facts and future needs.

This study is already under way. We are tracing through the statutes, decisions and Constitutions from Colonial days to the present, every recorded step in the development of our judicial organization from its Colonial beginnings into its present status. We are supplementing this framework from other available historical sources and from studies of the system outlined in the books as it operates in the field of action. Members of the judiciary are cooperating with us in this work through invaluable criticisms and suggestions growing out of their experience in the daily observation and operation of our judicial machinery.

In three of the larger counties of the state a small group of

the younger members of the bar are tracing back the histories of the local city and county courts to their origins. They are getting together all available information to show (1) the extent of their jurisdiction in criminal cases and the extent of the territory in which this criminal jurisdiction is exercised, (2) the officers of the courts—whether they are elected or appointed and by whom and for how long, the source of their remuneration—from salary or fees, and the amount, (3) the volume and type of business handled by each court from month to month and from year to year, the disposition of the cases, the number and consequences of appeals, the relative amount of business handled by each court, together with the extent to which the intermediate courts are eliminating the Justice of the Peace from the trial of criminal cases, and the extent to which they relieve the Superior Court from excessive pressure. From these three counties as radiating centers we hope to extend these studies to every county in the state. Out of all these intensive local studies carried on throughout the state, out of the focusing of the experiences and ideas of judges and practitioners working in and through our judicial organization, will come, we hope, some light on the baffling problems daily arising in the judicial administration of criminal justice.

The Procedural Rules

The best judicial organization may be hampered by unduly technical rules of practice and procedure which too often tie the hands of the courts while the guilty escape, technicalities which were built up in one generation to protect the individual from the rough hand of arbitrary power and the harsh exactions of a medieval law, and in the next became stepping stones on which criminals rose to higher crimes.

The gradual development of procedural rules in criminal cases in North Carolina is recorded—(1) in statutes scattered through the Session Laws from 1715 to 1929, (2) in decisions scattered through the Reports from Volume I in 1797 to Volume 199 now in the press, (3) in the practices of courts and officials which have not found their way into printed pages but which reflect no less the habitual processes of the law.

From time to time digests have been made of the decisions: by Iredell in 1839, Jones in 1854, Battle in 1866, Buzbee in 1880, Walser in 1899, Michie in 1916. From time to time compilations have been made of statutory changes with the judicial constructions placed upon them: The Revised Statutes in 1837, The Revised Code in 1854, Battle's Revisal in 1873, The Code in 1883, Pell's Revisal in 1905, Jerome's Criminal Code and Digest in 1916, The Consolidated Statutes in 1918, The North Carolina Code in 1927. The decisions represent the traditional common law as it has continued into the life of our time. The statutes represent merely patch-work changes in the common law made in scattered moments to meet obvious evils as they raised their heads. No comprehensive study of these decisions, these statutes, their relation to each other or to the unwritten practices of administrative officers, has yet been carried through. In short, no critical analysis of the theory and the practice of our criminal procedure has yet been made.

In 1848 the Field Code of Civil Procedure was completed. It furnished the basis for a complete codification and revision of civil procedure in North Carolina in 1868. In the spring of 1929 the American Law Institute completed its Model Code of Criminal Procedure. It is based upon an intensive study

of the procedural systems in the different states of the union and the leading countries of the world, by a group of distinguished law teachers, judges and practitioners. It furnishes the basis for a complete codification and revision of criminal procedure in North Carolina today.

We are undertaking this work with the aid of a number of the younger members of the North Carolina Bar living in different parts of the state. Each lawyer is (1) studying one or more chapters of the Model Code in terms of its common law and statutory background, (2) tracing the North Carolina law bearing upon each section of his chapter as it has developed through our statutes and decisions from Colonial days to the present, (3) comparing its present status in detail with the provisions of the Model Code so as to point out the similarities and differences between them, (4) raising questions as to the advisability of changes in our law either in conformity with the proposals of the Model Code or in conformity with any other proposals which local experience and judgment may recommend. As the first draft of each chapter is completed it will be rotated among the lawyers who have been working on the other chapters. This will give to each lawyer working on a single chapter an insight into its relation to the other chapters of the Code, into the technique with which the other men are working, and a comprehensive grasp of the purpose and scope of the Code as a whole against the background of our own procedural system. Each chapter will then be rewritten in the light of the criticisms and suggestions of all who are associated in the work, and with the greater grasp derived from a study of the Code as a whole. As each chapter is rewritten it will be circulated among the judges and prosecuting attorneys of the Supreme, Superior and Intermediate Courts for the invaluable criticisms and

suggestions which can come from men daily engaged in the administration of criminal law.

In this way we hope to arrive at an accurate statement of the law and practice of criminal procedure in North Carolina—what it is, how it came to be what it is, and how it is working today. We are not stopping with collecting the statutes and decisions representing the 1930 North Carolina law on the many propositions promulgated by the Model Code and sprinkling them among the varied Code provisions. A single point in space points out no direction. Two points do. Three may show a zigzag. Twelve may plot a curve. So with the North Carolina law of 1930. But if we carry it back of 1930 to the days when it began to branch off from its English rootage, if we get the statutes and decisions struck off by our legislatures and our courts from that day to this, if we can read not only what is in the lines of statutes and decisions but what lies between them and so plot the curves of the tendencies and trends they chart, if in addition, we can clothe these skeleton lines with the uses that are made out of them and the practices which have grown up around them not yet dignified in formal law, if we can focus on the baffling puzzles honeycombing our criminal procedural problems today, the different viewpoints of different men from different sections with different practices, we can bring about a codification and a revision of our criminal procedure, eliminating technicalities where they exist, clarifying vaguenesses where they confuse, stimulating the law in its slow and often belated response to the ever quickening tempo and rhythm of our life. We can not only bring it, we can make it stick. We can do vastly more. We can build into North Carolina's legal tradition new attitudes and new values worthy of the high traditions of the North Carolina Bar.

The first drafts of the chapters dealing with (1) Arrests, (2) Methods of Prosecution, (3) Grand Jury, (4) Indictment and Information, (5) Arraignment, (6) Jurisdiction and Venue, (7) Change of Judge and Removal of Cause, (8) Waiver of Jury Trial, (9) Presence of Defendant, (10) Proceedings to Determine Mental Condition of Defendant, (11) Conduct of Jury after Cause Finally Submitted and Verdict, have been completed and are now ready for circulation. Substantial progress has been made on the first drafts of other chapters.

Three conferences have been thus far held in Chapel Hill to initiate this work and to discuss results as we have reached them. The first of these conferences was held in August, 1929, the second on September 26 and 27, 1930, the third on October 31 and November 1, 1930. Seventy or more lawyers, representing a range of territory reaching from Wilmington to Asheville and all ranks of the profession from beginning practitioners to the attorney-general of the state and justices of the Supreme Court, attended these Conferences. Thirty of them are actively participating in the research incident to the program. Through them we hope to carry the Code to local groups of interested lawyers and local bar associations throughout the state. It will be time enough for legislative consideration when through these sifting processes we have crystallized our thinking into a Code which may be made to mean as much to Criminal Procedure in this day as the Code of 1868 meant to Civil Procedure in its day.

The Police

The most flawless system of procedural rules and the most efficient machinery for the trial of offenders is paralyzed if the offenders are not brought to trial. Today, as

never before, the spotlight is turned on the agencies for the investigation, detection and apprehension of offenders.

In North Carolina these agencies have grown up at different times and have developed into independent unrelated units.

The chief officer for the detection and arrest of offenders throughout our early history was the county sheriff and his deputies, constantly increasing. The Constitution of 1868 added the township to our governmental organization and made the ancient constable a township officer. The growth of cities has added the city police. Some counties have in recent years added the rural constabulary and the last legislature added the highway patrol.

There is no formal coordination of the criminal law enforcing efforts of the sheriffs of adjoining counties, nor of the police of adjoining cities and towns, nor of the constables of adjoining townships. There is no formal coordination of the criminal law enforcing efforts of the sheriff and his deputies in the county, the constables in the townships, the police in the cities and towns within the county.

These agencies exist side by side today with no responsible and unifying head, with many overlapping powers, friction making possibilities and countless opportunities for passing the buck, in many cases in ignorance, in indifference, or in doubt of the limits within which they may lawfully act. It is a system which tends to invite rather than to eliminate suspicion, jealousy, discord and frustration.

This situation calls for a study of the origin of each one of these law enforcing units, its adaptation to Colonial conditions, its evolution through our history into its present status, and the relation of these units to each other.

This study is already under way. In Chapel Hill we are undertaking to track out the story of the growth of each

of these units as it is recorded in the formal sources of the law: the decisions, statutes and Constitutional provisions. In three counties in different parts of the state a number of the younger members of the bar are studying the development and expansion of each one of these law enforcing units in their respective counties: the qualifications and the training of the officers, the policies they pursue and the officials and agencies which determine and control them. In this work they have the active aid of their sheriffs, their chiefs of police, and the other local officers whose units are involved, —men who can furnish out of their experience information obtainable from no other source. From these three counties as radiating centers we hope to carry this study to every county in the state—to lay bare the workings of each law enforcing unit, its powers and duties, its organization, equipment and methods for the exercise of its powers and the performance of its duties, and the ways in which these units do and do not work together. This study of each local unit and the comparison of these local units with each other will furnish, we hope, information which will be valuable in the reorganization of departments now being made in many cities and in the formulation of future policies of police.

The Executive

The ablest organization of police and the wisest treatment of offenders from the bench may be frustrated by unwise uses of the power of pardon and parole. More than once in the memory of men now living this has happened to the discouragement of the efforts of judges and prosecuting officers. We are undertaking a study of the administration of these tremendous powers throughout our history—as they are revealed in the statutes, decisions and

Constitutions, in the application and correspondence files, in the knowledge and experience of past and present governors, pardon commissioners and other state agencies concerned and interested. We will have the active help and guidance of these officials in this effort to track out the workings of this machinery, the policies developed and followed and their effectiveness so far as it may be determined.

The Public

Any one of these agencies alone or all of them together are powerless without the understanding cooperation of the public and the resistless pressure of informed public opinion. It is a long way from the hue and cry which called every citizen to follow the offender, to the day when bystanders jeer at prohibition agents attempting to raid a speakeasy. Somewhere between these two extremes there must be found a public supporting point where the people will stand behind their officers with a power that will not be denied. To find that point is the problem of law and order. This public sentiment is registered in subtle ways from the township constable to the chief executive: in the degree to which a policeman opens his eyes to what is going on, in the zeal with which the prosecution is conducted, if at all, in the character of the verdict brought in by the jury, in the nature of the judge's sentence, in the exercise by the executive of his power of pardon and parole. Some way must be found to focus public opinion on this problem, to eliminate the lost motion which occurs today when someone sounds the alarm of a crime wave and someone else with equal assurance denies it. Neither knows the facts, neither has any way of finding them and the public is torn between two uncertainties, unless the cry of "wolf, wolf" has been too often raised.

To meet this situation we have begun a study of the extent to which available records are now being kept by the various law enforcing units throughout the state, the uses to which they are and might be put, the ways in which they may be improved, in the effort to work out a unified and comprehensive record system for the state—records which by charting the varying number of offenses reported, the gradually changing character of these offenses, and the shifting classes of offenders, will show the way the winds of crime are blowing and give to the officials charged with the administration of justice needed light on the nature and scope of the problem with which they have to deal; by comparing the numbers of offenses reported, arrests made, prosecutions commenced, convictions obtained, punishments imposed, appeals taken and other dispositions along the way will give to each law enforcing unit a better notion of its own internal workings, the effectiveness of its methods and policies, and the workings of its comrade units; and above all, by showing what is going on and what is being done about it, will furnish definite starting points for the cooperation of the home, the church, the school, and other social agencies with the law enforcing officers in the prevention, detection and treatment of crime. —without which all law enforcement is a helpless farce.

IV.

OUR GOVERNMENTAL STRUCTURE

Interlocking Functions

We have carried these investigations far enough to see the increasing intricacy with which the administration of criminal law is bound up with the administration of all law, far enough to see that the study of the criminal law enforcing duties of officials cannot be completed without studying them in rela-

tion to the governmental structure out of which they grew. To illustrate: the constable may be called on to serve a warrant in a criminal case and a summons in a civil case on the same trip; the sheriff may be called upon to levy execution under a judgment in the morning, collect taxes in the afternoon, raid a whiskey still at night; the governor may be called upon to initiate the investigation of a lynching, mediate between opposing parties to a strike, pass upon an application for pardon, and urge cities and counties to pay the interest on their bonds all in a day.

This is only natural. The first function of our government, as of every government, in city, county and state was the simple preservation of the peace. On a structure fitted mainly to this purpose, we have, with little thought of administrative efficiency, superimposed new and increasing burdens at every step along the governmental climb from its single task of curbing antisocial tendencies to its present complicated ministrations to manifold human needs.

Expanded Studies

This situation calls for a corresponding expansion of the studies of our criminal law enforcing machinery to include a critical analysis of our governmental structure as a whole.

This will involve a study of our city governmental organizations: from the simple and informal organizations of the early 19th century towns to the complex organizations of modern cities; from the days when special acts were the sole sources of city organization to 1917 when provision was made for the incorporation of cities under general laws according to uniform plans and supervision of city finances was provided by the Municipal Finance Act; and finally from 1917 to the experimental development in recent years.

It will involve a study of our county governmental organization throughout the earlier years of our history to 1868 when county government was handled largely by Justices of the Peace in the county court; from 1868 to 1875, a period of uniformity, when it was in the hands of commissioners elected by the people; from 1875 to 1927, a period of legislative control, when every county began to take the bit in its teeth and uniformity was lost in differentiation; and finally since 1927 when the reaction against divided authority and responsibility set in and the first comprehensive and determined effort since 1868 was made to reorganize county government by centering responsibility, budgeting finances, and supervising bond issues.

It will involve a study of the growth in the structure and the functions of state government from the early Colonial days when one man was the single source of power, to the separation of his power into legislative, executive, and judicial, lodged in as many different bodies, to the creation of commissions with administrative powers uniting the functions of all; from the days when the state created lesser governmental units at will and literally turned them loose and forgot about them until their wild oats brought many of them back to her attention and through the Municipal Finance Act of 1917 and the County Government Act of 1927 she began to exercise a belated supervision and control.

It will involve a study of the interrelations of all these, for over the formal lines of separation a network of informal duplications and complications has spread which makes them literally inseparable.

These studies are already under way. A number of city attorneys are tracing the development of their particular city government through expanding charters, ordinances and

general laws. A number of county attorneys are following a similar process in studying the growth of county government. Thus they are attempting to chart the growth in the activities of their governmental units, the corresponding changes in the governmental machinery, and their actual working processes. We plan to continue these studies through the years until they include every city and county in the state. The lawyers engaged in these studies have access not only to the printed words of statute and decision but also to the unprinted practices as they spring from the resourcefulness of officials in the necessities of situations unthought of and unprovided for by law.

V.

GOVERNMENTAL REORGANIZATION

These studies of our governmental structure and its environment in the effort to lay bare the processes of each governmental institution in each local governmental unit and the interrelations of them all would be worth while at any time. Today they are not only worth while, they are necessary! Fundamental to the understanding of the issues involved in the governmental reorganization which is bound to come, which is upon us now, as the life of North Carolina overflows in quickening, lengthening currents its local governmental limits.

Current Economic and Governmental Expansion

History points with prophecy. In the latter part of the 17th century North Carolina was a few scattered settlements strewn along the Atlantic Seaboard, the banks of the Cape Fear, the Roanoke and the Neuse. The 18th century witnessed these scattered clearings slowly draw together into scattered settlements, while the sight of

smoke rising from the chimney of the nearest settler's cabin and the sound of the nearest neighbor's dogs barking in the distance drove Daniel Boone as it drove others to the piedmont and the western hills. The middle of the 19th century witnessed the charting of railroads: the Wilmington and Raleigh, the Raleigh and Gaston, the North Carolina Railroad, the Atlantic and North Carolina, the Western North Carolina; lines of communication which furnished the landlocked inland farmers with an incentive to raise crops for foreign trade as well as for home consumption. They brought people who had made their living and lived at home into intimate relationships and drew scattered settlements into a connected commonwealth. The dawning years of the 20th century sees this unified state stretching out through railway, highway and airway to become as completely integrated with other states and sections as thirty years ago its counties were interlocked within itself.

Corresponding transitions in our governmental system followed on the heels of these social-economic trends. Government followed settlers into their cabins in the heart of the wilderness, threw a ring of protection around them in the county line and turned them into citizens in county units reaching from New Hanover to Currituck, from Chowan to Cherokee, and it would be a crime against the realm of oratory if one did not add "From Murphey to Manteo." Thus has it grown from one to one hundred counties: Dare the smallest with a population of 5,123 and Guilford the largest with a population of 132,989. On this farflung framework of 100 counties—100 separated governmental units, we have laid the subdividing framework of the township, adding over a thousand governmental units more, bringing the complications of county and township functions. On this subdividing framework of the

township we have laid the overlapping framework of the town: from one in 1673 to 498 in 1930; from Dellview the smallest with a population of 10 to Charlotte the largest with a population of 82,675.

The Current of Economic and Governmental Consolidation

This current of division, subdivision and overlapping in governmental units long since reached its crest, today is breaking at our feet, and tomorrow will carry many divisions under in the undertow. County organization reached its swiftest pace by 1850 in the 84 counties of that date. It reached its peak in 1911 in the organization of the 100th county. Township organization reached its peak on its birthday in 1868—almost if not quite still born—and has been receding in importance ever since. City organization reached its fastest movement around the turn of the present century. New ones forming since have been few and far between. Town and township and county alike are yielding daily to the impersonal, imponderable forces of time and space and circumstance; to steam and electricity; to railway, highway and airway. These forces set the stage for organizing genius which works its centralizing will before our eyes. If the length of time it took to get to court and market in a mule and wagon over muddy roads played its part in locating economic and governmental centers, the length of time it takes to get to court and market by railway, highway and airway can play its part in relocation now. Cruel but not strange that these avenues should bleed these little local centers and drain their life's blood into the larger; that today no less than two thousand years ago the race is still to the swift and the battle to the strong.

Business long ago responded to these forces. The new lines of communication have widened areas of contact, brought the store in the next town into competition with the store across the street and the industrial enterprises of the state into competition with those of other sections. It has upset the old equilibrium and brought on new fights to retain old footings and establish new ones. Branch banks, chain stores, corporate mergers reflect the frenzied efforts of business organizations to expand and reorganize into units co-extensive with the newly created territorial reach. Co-operative marketing reflects the efforts of farmers to cope with world-wide forces which are symbolized in every solitary field of cotton and tobacco. These processes represent the charging off of losses and the consolidation of gains in readiness for new advances from strategic centers.

Here as elsewhere, now as usual, government follows after. Road districts in recent years have merged to widen. School districts have been continuing as motor roads and motor trucks picked the sites of consolidated schools. City and county health and welfare agencies are steadily consolidating. In two counties now the city and county are working out the legal problems incident to a merger of the two governmental units overlapping in the same areas. One county has asked for consolidation with another. Newspapers have begun to discuss the uses of surplus court houses and other agencies the disposition of surplus spittoons. Anonymous officials in state governmental circles have drawn up reorganization schemes to reduce a hundred counties to fifty. The intellectual courage displayed in this official foresight is matched with the moral caution displayed in anonymity. It is a distinctive recognition of the forces which, in answer to threatened calendar changes in the days of the French Revolution, sent

the people singing through the streets of Paris, "Give us back our eleven days." Forces which a little while ago refused to let the legislature steal a march on God Almighty by pointing the hands of the clock to seven when they should be at six. In 1927 McLean gave impetus to this reorganization in the most significant legislative enactments since 1868. In 1931 Gardner promises more drastic and far reaching measures yet.

The Difference

While government thus follows on the heels of business it cannot narrow into its path. It must not fall victim to analogy. Business is leading in reorganization. It must not be misleading. Like a promissory note it is a courier without luggage. Its reorganizations and adaptations to environment depend primarily upon individuals in their capacities as stockholders rather than in their capacities as citizens. It has fewer individuals to deal with. It has simpler issues to meet. Its purpose is primarily profit. And it is only natural that balance sheets with their tale of debits and credits, profit and loss, dollars and cents, should carry the day in stockholder's and director's meetings.

Government deals with individuals in their capacities as citizens rather than in their capacities as stockholders. It deals with innumerably more of them. It meets with issues infinitely more complex and with motives infinitely more varied. Its purposes are infinitely broader. It is concerned with the bread line as well as with the profit line, with all the peoples' troubles as well as with its own. The stuff of its life is the ideals and aspirations, the realities and dreams, the welfare and the happiness of its citizens within the limits of a law that does not stifle and an order that does not cramp.

This does not mean that government cannot be business-like—that it cannot make budgets and stay within them. The fact that a government is more than a business does not mean that it must be less business-like. Rather it is the reason it must be more business-like. Its ends and aims, and the instrumentalities through which it seeks to serve them are so vast, so compelling, so freighted with weal or woe to everyone that inefficiency is sin. The difference in the issues and procedure involved in the merger of the private banks in a community and the consolidation of the public schools, indicates the difference in the problems of business and governmental reorganization today and at the same time explains why business outruns government. I have seen banks consolidate without a ripple on the surface of the life of the community affected by the consolidation. In the same community I have seen attempted consolidation of little county schools, not red because not painted, bring hundreds of farmers to the county seat, while grass was growing in their fields, tie them in knots on street corners while the county superintendent of schools slipped out of town until the storm blew over. Even the farmer has interests running deeper than his cotton crop!

Financial economy is at stake in governmental reorganization—and more. Self-government is involved and is not to be forgotten! It may be expensive, but history witnesses that it costs no more and no less than liberty. And liberty, as history also witnesses, is more than a theory of life. It is a condition of it.

But in government as in liberty as in well nigh everything the absolute is lost in relativity. Self-government carried to one extreme is lost in anarchy and liberty in license. Carried to the other, both are lost in serfdom. Between these two

extremes we must somewhere strike a balance of law and freedom. Every fifty people cannot afford an independent governmental structure. It would cost more than they could make to maintain it. Three millions of people scattered over thousands of square miles of territory need more than a single governmental structure if government is to be responsible to varied local needs. Government to be self-government must be local, but the question is how local must it be? We cannot be bull headed about this issue. The fact that governmental lines are fixed and certain does not mean they are eternal. The forces which drew them as they are can rub them out and draw them over anew. If old lines are rubbed out who shall draw the new ones and where shall the new ones be drawn?

They cannot be drawn by bookkeepers in early morning enthusiasms. They cannot be drawn indoors by experts looking at the map. They cannot be drawn by legislative fiat only. If they are to be enduring they must be drawn on something more than paper and with something more than pen and ink. It is not enough to know the figures. We must know the folks. We must not make unthinking sacrifices of the little centers of control and the loyalties which have grown up around them.

In the realm of human nature and human institutions a straight line is not always the shortest distance between two points. In government no less than in romance the longest way round may prove the shortest way home. Too often business grows impatient of the tangle and, unwilling to untie the Gordian Knot, attempts to cut it. Too often government enamored of the tangle seeks to untie the knot for the sake of unwinding the cord. Both are destined to learn again as they have learned before that freedom was not won by sleight of hand or rule of thumb;

that due process of law is a part of the psychology of a people; that it may be as wrong to do the right thing in the wrong way as it is to do the wrong thing.

VI.

THE HOPE OF DEMOCRACY

These are lessons our fathers learned before us. The great masses of the people have never run to self government in the beginning; they have been driven to it in the end. It is no hot house plant. It is no sheltered weakling. It is no academic nostrum conjured up in classic shades and college walls. It was born in the open. Its birth pangs have been felt by so many peoples in so many times that its reality does not disappear with the rubbing of the eyes. Through the ages it has come down to us—inching along.

It took long years of misrule and oppression to bring the barons to the rallying point against King John at Runnymede seven hundred years ago. They went like the tortoise; they left like the hare. They signed their names to a document, but they did not put their hands to the plow. In six weeks King John was doing business almost as usual at the same old stand. They established a principle; they did not change a practice. They set a precedent; they did not mould a policy. One fact remained, grew more astounding through the years—the fact that they had met! They met again in 1688, in 1776. They provided for regular meetings at the polls and in the parliaments. But whether they went home from Runnymede where they wrote the Magna Carta, or from London where they drew up the Petition of Right, or from Halifax and Philadelphia where our Bill of Rights became our fundamental law, or from the ballot boxes in every voting place,—they lived to learn

that the facile phrases of patriots do not alone overcome the stubborn facts of life, that the Constitutions of the State and the United States do not change the constitution of human nature; that shades of the ancient spoilsmen may still gather in the modern sheriff's eyes, that remnants of the divine right of Kings may still crack down in a policeman's billy, that "to the victor belongs the spoils" may be alike the slogan of the hereditary monarch and the elected clerk of court. They have lived to learn, in short, that when Cincinnatus goes back to plow Rome goes back to play, that to the extent that people are at a loss when they go to the polls government is at a loss when they quit and go home, that eternal vigilance is the price of liberty.

Short terms of office, rotation of officers, the naive faith that in a democracy any man can do anything and that the only qualification required of public officers is that they be free, white, twenty-one and elected by the people,—these devices have been self government's resort to self defense, mechanical equivalents of viligance. No wonder the people were thrown back upon themselves to find that too often their wish had not been the father to their thought—that too often themselves had not been all their courtiers had cracked them up to be; that men below them could steal as well as men above them and that it made little difference whether they were commissioned of God or of God's children; that the substance of tyranny may flow through the forms of liberty and the people be betrayed in the very house their hands have built; that there is shrewd psychology in the ancient doctrine of the common law of land that while occupancy for a period of twenty years may not give title, it gives a possession which cannot be disturbed and so creates the moral equivalent of ownership. Knowledge is no guarantee of

character, they have often learned, and neither is ignorance, as they have just as often found. "I want to qualify," said a legislative justice of the peace to a clerk of court some years ago. "I can swear you in," said the frank and forthright clerk of court, "but all hell can't qualify you."

Nevertheless the hope of democracy is that its self and its servants want to qualify and that they can and will. The question is not whether it can lift its standards, but whether it can live if it doesn't! It may be the sole hope of a democrat that he will get into office. The hope of democracy is that when he gets into it he will get "onto" it.

And yet, despite the fact that the very life of democracy is staked upon that hope, it has thus far made no systematic effort to realize upon it. Every general election year witnesses literally thousands of men go into public office in North Carolina by elective and appointive process for terms ranging from a few months to eight years: from the Justice of the Peace in Chapel Hill township to the Justice of the Supreme Court of North Carolina, from the Constable to the Governor. The men who reach the higher offices of Governor and Attorney General, Judge and Solicitor and the like are in the main qualified by the training or experience in governmental institutions and processes when they get there. But common knowledge tells us this is not true of the lesser but no less important offices in city and county governmental units: the Justice of the Peace, the Coroner, the Sheriff, the Policeman, the Register of Deeds, the Clerk of Court, the County Commissioner and the like. Here, no less than there, popular government is on trial in every official transaction however minute, in every point of contact between public officer and private citizen. "This is a government of laws and not of men," the American Bar Association medal says. The people

have learned that and they have learned better than that. "Here comes the law," says the negro, grabbing for his dice as a uniformed policeman bears down upon a crap game. And so say we all.

The letter of the law is in the book. The symbol of the law is in the office. The life of the law is in the officer. In him the citizen and his government meet, shake hands and get acquainted. Popular government hangs upon the character of this acquaintance. Here it must justify itself. Here, in so far as human beings can, we must help it justify itself. We must not only swear it in, we must qualify it. This is the school room's function. This is the teacher's task. Is the teacher in the school room fitted for it?

I shall confine my discussion of this question to the law school and to legal education. More specifically, I shall confine it to that part of legal education in a law school which concerns itself with the criminal law and its administration, with the constitutional limits within which the State, the counties and the towns may function, the governmental institutions and processes through which they function. These are the courses I have undertaken to build. And if within their bounds I tread per chance or per choice on academic toes, they will be my own.

In the early days of legal education when the teacher and the practitioner, the apprentice and the student, the school and the office were one and the same, the classroom was the clearing house of the problems and the practices of the legal profession. Around the middle of the nineteenth century as the lawyer closed an office to open a school, as the practitioner in the courtroom became the teacher in the classroom and the apprentice in the office became the student in the school, legal education carried two lines of communication

with the current development of professional problems and practices: (1) the practicing experience of the teacher, (2) the enactments of the legislature and the decisions of the court of last resort which periodically made their way to the student's table and the teacher's desk.

The practicing experience of the teacher when he ceased to practice ceased to grow, gradually became less practical as the problems of the practice changed, and finally faded into reminiscence with the years. The legislative enactments come to the student and the teacher today unaccompanied either by the discussions and compromises which hammered them into their enacted shape, or by the conditions and policies on which the discussions and compromises were based. The judicial processes, beginning with full investigation by the lawyers, proceeding with the presentation to the trial court through parties and witnesses of selected facts, going up to the appellate court in a printed record containing an abbreviated statement of these selected facts accompanied by counsel alone, finally come into the hands of the student and the teacher in the still further abbreviated form of a court opinion containing a minimum of fact and a maximum of law unaccompanied by parties, witnesses, counsel, or court. These at best are slender ties. The first one fades into a phantom from the start. The second begins to frazzle before our eyes as we learn from tabulations that for the last forty years only .4 of 1 percent of the criminal cases in the Superior Courts went to the Supreme Court on appeal; as we surmise that a somewhat similar situation exists with reference to other governmental problems and the processes through which they are handled. The teacher and the student are continually getting the little end of the horn which calls on them for considerable blowing to make a noise like a lawyer. The

net result of these diminishing ties has been increasing schoolroom isolation.

It is the task of the professional law school teacher to open up fresh lines of communication between the classroom and the courtroom, the law school and the law office, the law teacher and the lawyer; to bring the law school from the sidelines into the thick of things, to bring the classroom out of the cloister into the heart of the life in which its students must live and make a living; into living contact with the structure and the workings of our governmental system.

The studies in governmental institutions and processes already under way and heretofore outlined, constitute the first step in this expanded program. But it is not enough to study each governmental agency in its separate distinctness. To get a completed picture of any one of them it must be studied not only in its self but also in its setting. To illustrate: the analysis of our criminal law enforcing machinery demonstrates that uncertainty and delay in the detection of crime may destroy the effect of the most effective agencies for criminal trials, that unfairness and inefficiency in criminal trials may paralyze the efforts of the most effective police departments, that the achievements of both may be neutralized by futile policies of punishment, pardon and parole; that no law is stronger than the police desk, the jury box, the judge's bench, or the governor's chair; that it is literally true that the chain of our law enforcing machinery is no stronger than its weakest link; that all are in danger of hanging separately because they are not hanging together.

This leads to the second step in the program: the study of the present interrelations of all these units as a basis for the coordination of all the agencies for prevention, investigation and detection, trial, punishment, pardon and parole of of-

fenders with the public from which their power comes—for a unified attack on the problems of crime, criminals and criminal law enforcement.

These studies are already beginning in meetings in a number of counties between the Judge and Prosecuting Attorney of the Superior Court, the City Court, the Juvenile Court, together with the Sheriff of the county and the Chief of Police of each town in the county. These are the key officials most immediately involved in the administration of the criminal law.

In these meetings there will be common problems for the judges to discuss. A single illustration will suffice. Our judicial practice allows to every defendant in a criminal case a series of separate and successive trials—in the Justice of the Peace Court, the Intermediate Court, the Superior Court. If the defendant chooses he may require the state to prove him guilty three times before it proceeds to judgment. It does not take long for experienced criminal lawyers or experienced criminal defendants "to get the number" of the judges, to estimate the sort and the severity of punishment different judges will impose, with sufficient certainty to determine the advisability of appeal from one court to another and the advisability of continuance until the arrival of the most likely judge. In this way they not only play off both ends against the middle, they play off the middle against both ends! No judge in the judicial hierarchy can alone do anything about it. Concerted action is the only hope. These conferences will lay the basis for it.

There will be common problems for the prosecuting attorneys to discuss. To a lesser extent the former illustration suffices here. Each prosecuting attorney in the bounds of a discretion literally beyond control can determine on his own motion,

whether a case is to be prosecuted or nol prossed, how mildly or how sternly the prosecution must be pressed, whether a plea of guilty to a lesser offense will be accepted. He may do all these things and more, and for reasons sufficient only to himself. In the resulting situation there are as many differing policies as prosecutors. One prosecutor, as one judge, may feel the prohibition law is the sole and only law to be enforced, while another feels it is only one of many. They may and do frustrate and "cramp each other's style." Criminals and criminal lawyers play upon these differences to private gain and public loss. It is part and parcel of their stock in trade. No prosecuting attorney can alone do anything about it. Concerted action is the only hope. These conferences will lay the basis for it.

There will be common problems for police officials to discuss. Within a single city's limits three independent agencies are authorized to undertake the investigation of crimes and the apprehension of criminals: the sheriff, the constable and the policeman—official agents of the county, the township and the town. In different cities this situation is met by different informal arrangements: in one the sheriff and his deputies keep hands off all offenses and offenders in the city limits, and leave the policeman in complete control; in another the sheriff keeps hands off the lesser crimes and keeps hands on the greater; in still another in all offenses the field is free for all; and in all of these cases a free for all it is, or easily may be. In the days of the hue and cry a citizen was required to track the criminal across his plantation to his property line and the adjoining land owner here took up the chase. Today the citizen's representative may track the criminal to the town, the township, or the county line as the case may be, and if the scent is warm and the pursuit hot may cross it, not

if the scent is cold. The state stops to swap horses in the middle of the stream! No set of officers can alone do anything about it. The problem runs across the line in every criminal. Concerted action is the only hope. These conferences will lay the basis for it.

There will be common problems for judicial, prosecuting and police officials to discuss. Police officials gather the information on which the great majority of criminal prosecutions are to be based. The prosecuting officer rarely sees the defendant or the evidence before the case is called for trial. He is at the mercy of the investigating and fact gathering agencies. If they fail, he fails. The facts gathered and presented by police and prosecution furnish in the great majority of cases the information which guides the judge in fixing the sentence. He is as much at their mercy as the prisoner is at his. If they fail he fails, and if he fails, all have failed.

The ramifications of these problems will inevitably draw into these conferences the men in the background empowered to determine the policies to be carried out by many of these officials in the foreground: the commissioners of the county, the mayors and aldermen of the cities, the city and county managers and attorneys—agencies influencing the selection of grand and petit jurors, the management of jails, chain gangs and prison camps, the hiring and firing of police and the operation of the courts themselves.

These conferences of city, county and state officials, engaged in and responsible for the administration of the criminal law within the territorial limits of single counties are the radiating centers from which the movement will be carried to surrounding counties and finally extended step by step to every county in the state. The experience of each originating group in each strategic county will be invaluable in the organization of simi-

lar groups in surrounding counties which will lay the basis for the sectional conferences throughout the state. In these conferences the commissioners and the aldermen, mayors, managers and attorneys, judges and prosecutors, sheriffs and police, may shake hands across city and county lines—lines never seen by offenders who have long been beating paths across them, and never doubted by officials who have found a wall upon them. In the war on crime these traditional dividing lines are destined to become the common meeting ground; the separating walls will be consolidation points.

Just as the county-wide meetings form the groundwork for the section-wide conferences, the section-wide conferences furnish the foundation for a state-wide school for the state-wide study of governmental institutions and processes as they work from day to day. The county meetings and sectional conferences of the agencies of town and township, county and state engaged in the investigation of crime and the apprehension of criminals becomes the state-wide school of police instruction. The county meetings and sectional conferences of the judges and the prosecutors operating the agencies set up by these differing governmental units for the trial of offenders, of the agencies for punishment, pardon and parole,—of aldermen, commissioners and legislators,—mayors, managers, attorneys and all policy-determining officials,—the county and sectional conferences of all of these officers becomes the state-wide School for the Study of Criminal Law Administration in all its phases.

The interlocking criminal and civil administrative functions called for an expansion of our studies to include the civil as well as the criminal processes of our governmental institutions. They call now for a corresponding expansion

of the programs and the scope of the conference meetings. To the problems, growing out of the administration of criminal justice, already on the program of the different groups are now being added for consideration the problems growing out of the levy, collection and final disposition of taxes,—the machinery through which money is paid in and paid out of the public treasury and the safeguards thrown around it while it is on hand. Here is a problem no less fundamental than the preservation of the peace. Here too is a crucial line where governments can win or lose the confidence of the people and literally make or break themselves—as they have done before, as they are doing now. The ramifications from these two keystones of the arch, these two pillars of the temple, will ultimately carry the scope of our investigation and discussion throughout the governmental scheme.

The cooperative studies of our local governmental agencies by local lawyers and local officials throughout the state lay the basis for and feed into the county wide meetings of governmental officers for the study and discussion of governmental problems. The completion of these initial studies in a number of adjoining counties prepares the way for comparative studies of similar governmental agencies in different places which in turn lay the basis for and feed into the sectionwide conferences. The completion of these comparative studies in a number of strategic centers on a sectional scale prepares the way for further comparative studies on a state-wide scale which lay the basis for and feed into the state-wide school for the study of governmental institutions and processes in Chapel Hill. Thus the local, sectional and state-wide gatherings become clearing houses for the discussion of county problems and the interchange of ideas and experiences in governmental administration.

The detailed programs for these gatherings are now being planned in the light of the needs of those concerned and interested. To illustrate: lawyers and local officials in at least five counties containing the largest cities in the state are working out a curriculum for a school of police instruction which will be best adapted to the needs of the police officers in their own respective areas, as a basis for the county meetings. As these county groups complete their tentative plans they will discuss them in detail with the officials in surrounding cities and counties and revise them in the light of their discussions as a basis for the sectional conferences. As these sectional groups complete their tentative plans they will gather together to agree upon the curriculum for the state-wide school. The same procedure will be followed in outlining plans for the study and discussion of the administration of the criminal law in all its phases. City and county attorneys are now working along similar lines with mayors and county commissioners to outline for discussion the problems connected with the levy, collection and distribution of taxes and the adequate safeguarding of public funds while they are on hand. The initial gatherings of these groups will take place within the next three months in strategic centers throughout the state. They will culminate in the state-wide gathering in Chapel Hill in the coming summer. President Graham offers the University dormitories and classrooms free of charge.

Judges and prosecuting attorneys in a number of local courts together with local practitioners have volunteered to cooperate with us in the police instruction in the local meetings. They can bring to this task an intimate knowledge of the local problems of police, beyond the grasp of any outsider. The solicitors of a number of judicial districts have volunteered to join

the instruction staff and bring into the local and sectional gatherings the results of their experience with the workings of the law enforcing machinery in the wider territory of their districts. Likewise a number of Superior Court judges have pledged to the instruction in the local, sectional and statewide gatherings their experience in criminal law enforcement over the still wider territory of the eastern and western circuits, together with the Assistant Attorney General in charge of criminal prosecutions in the Supreme Court and Justices of the Supreme Court—the final clearing house of disputed questions. Along these same lines we are building up the instruction staff in the other phases of governmental administration. From our own ranks instructors are rising.

Out of these cooperative studies and the gatherings in which they focus may come to each participating officer a better understanding of the governmental organization of which he is a part as well as of his part of it, a better understanding of his own governmental responsibility together with an information and a training which will better fit him to discharge it. Out of these unofficial associations of officials may come mutual understandings which will furnish the basis for a cooperative relationship pointing the way to immediate co-ordination of all the agencies of our government, to gradually increasing consolidation of many of their functions, and to ultimate mergers of many governmental units root and branch—values achieved in practice before they are put down on paper. Finally there may come a series of treatises, textbooks which will instruct each newly-elected officer in his powers and duties as he enters upon the administration of his office—bring to him not only the plans and practices of his immediate forerunner in office but also the plans and practices of other officers in similar offices throughout the state.

We hope to turn these studies, these conferences, these treatises into (1) continuing agencies for the analysis of the structure and the workings of our governmental institutions, by those who know most about them and who out of their knowledge and experience may recommend changes for legislative consideration as the need for them arises, thus avoiding the necessity which literally drove Governors McLean and Gardner to call on outside experts for assistance in drafting reorganization measures; (2) continuing channels through which our steadily accumulating governmental experience may be transmitted to successive administrations, enabling them to start nearer the point where their predecessors left off than where their predecessors began—thus minimizing the losses now sustained through the democratic devices of short terms of office, rotation of officers, and amateur officials, and sweeping popular government continuously forward to new high levels of efficiency; (3) continuing institutions through which may be transmitted to successive generations of students in the classroom a more perfect understanding of the principles and practices of popular government—antennae which catch all the isolated experiments and newly developing tendencies in governmental administration in their inception, and record them in the class room at the class room hour. When the teacher opens and keeps open these lines of communication, when he learns to focus these scattered experiments and tendencies into definite trends—to fuse the hints of prophecy which they contain into enduring policies of law and send his students out ahead of instead of behind the law's advance, he will have measured up to my conception of the professional law school teacher's duty to his students, the law school's duty to the legal profession and the University's responsibility to the people of North Carolina who at Halifax

in 1776 charged her to "consult the happiness of the rising generation and fit it for an honorable discharge of the social duties of life." On this platform I plant myself, my courses and my classroom.

In carrying out this widespread program we depend (1) upon the legal training of the members of the bar, their personal and professional interest in local governmental institutions and practical governmental processes in the city and county where they undertake to live and make a living; (2) upon the knowledge and experience of men in specialized types of governmental work—as attorneys for city and county, as mayors, managers, aldermen and commissioners, as sheriffs, coroners and police, as prosecutors and judges in the courts of city, county and state, as governors, attorney-generals and the heads of state departments; (3) upon the observations of interested citizens from the sidelines—particularly editors whose business it has been and is to comment on the administration of public affairs and who are strategically situated to gain invaluable insights. The knowledge, the experience, the ideas and the willingness to work of all of these sources of power now too often lying idle or going to waste,—we expect to capitalize and focus upon the problems of popular government in the interest of the state and its people.

These home talent agencies may not in the beginning achieve results earmarked with the mechanical expertness of outside investigators. But they offer compensating values: As inside investigators they can frequently start where outside investigators leave off. They can break into and stay in the current of official practice in the daily line of duty and there find things book entries do not show. They will have a native interest in translating unofficial reports into

official actions. Long after their reports are thumbed to pieces the knowledge and the training gained in their investigations will remain to be reflected in public affairs. In short, not only the work remains in the county but vastly more important, the workers remain there. In doing this work they will not be stepping on the toes of the constituted authorities; they will be standing on their shoulders. It may be true in a physiological sense that a people cannot lift itself by its own bootstraps, but in a psychological sense it cannot lift itself in any other way.

Reliance on this voluntary cooperative effort has thus far been justified. Five years ago through the medium of the Law School Association lawyers were invited to work on specific topics of the law for law students as carefully as on briefs for the Supreme Court, to come to Chapel Hill and deliver the results of their work in lectures at their own expense. As beggars we dared to be choosers and to tell them we didn't want them to come unless they were prepared to do a piece of work which in thoroughness and precision would be worthy of emulation. They came: some for a single lecture in the evening; some for a series of lectures extending over a number of days—lectures which have developed into seminars for the analysis and discussion of legal problems of current practical importance and which have been reduced to writing for law student use in manuscripts of excellent quality ranging from 50 pages to 110. On the same basis 30 practitioners of the law for three months have been finding the time to work on the foundations of a new code of criminal procedure and to come for two hundred miles to participate in discussions which have lasted for two days,—all at their own expense. Forty-three others have begun to work on other phases of the program—one hundred and sixty-three

letters are now on file from lawyers and officials pledging their support to this undertaking.

It is literally true that in these men this movement lives and moves and has its being. I have merely helped to draw its outlines. They are filling in its features and breathing into them the breath of life. The question remaining is, not will it go, but will it keep on going; not will men have the enthusiasm to start upon this high adventure, but will they have the stamina to stick to it—at night after the day's work is over, on Saturday afternoons after the week's work is done—and all without a cent of pay!

This is not the first time in the history of North Carolina or of the University of North Carolina that a great experiment has begun and carried through without a pocketbook. The men who met at Halifax in 1776 had no money in their pockets but they wrote a Constitution and around it built a state. Returning soldiers in 1865 had no money in their pockets as they came home to find the things they had given their lives to broken and stooped to build them up with worn out tools, but they rebuilt a commonwealth. The men who laid the cornerstone and opened the doors of this University in the hesitant, uncertain days that followed on the heels of Revolution had no money in their pockets, and the men and women who reopened its doors in the disastrous days of Reconstruction in 1875 were empty handed.

They had no money in their pockets—they were dreaming when they did these things. And in them is revealed the spirit of a people which sees in disaster only a challenge the brighter to burn and which when darkness hedges it about builds in itself a dwelling place of light. We are the heirs of that tradition.

Today, caught in the undertow of a terrible depression,

with banks breaking, industries rocking, agriculture in the slough of despond, the shrill cry of the auctioneer ringing round our homes, we are called upon to resolve that our spirits shall not fall with the hammer, to prove in actions louder than our words that we are the heirs of great traditions, to demonstrate with all the clarity of light that in spirit and in truth we are the sons of our fathers.

"Say to the King," quoth Raleigh,
"I have a tale to tell him.
Wealth beyond derision,
Veils to lift from the sky,
Seas to sail for England,
And a little dream to sell him,
Gold, the gold of a vision that
Angels cannot buy."

From every living one of us North Carolina and the University of North Carolina call not for our money but for ourselves and for those things in ourselves that money cannot buy. We have searched our pockets and found them empty. Now we come to search our souls. In 1863 Isaac Avery, a citizen of North Carolina and a son of this University was shot down while leading on his men at Gettysburg. He lived long enough to write on an envelope, crimson with his blood, this message: *"Tell my father I died with my face to the foe."*

This envelope is treasured among the records of the Historical Commission at Raleigh. I saw it there a little while ago. England's Ambassador to America, James Bryce, held it in his hands some years ago and said: *"It is the message of our race to the world."*

May it be our message to the world as North Carolina and the South move back into the full tide of American life

today to measure their strength with the strongest; as in this swelling tide local stores become links in a chain, local banks become branches of a single stream of high finance, local business units surrender allegiance in far flung corporate mergers and independence everywhere is invited to sell out, be absorbed or swallowed up; as this thing we call "the State," triumphant over tribal chieftain, feudal lord, mediaeval church and autocratic king, feels itself sinking into the hollow of a hand with longer reach and stronger grip. The center of gravity in American life—in our social fabric, our economic order, our governmental structure—is shifting today with a meaning no less significant and far more real than in 1776. Here is a cause to which ourselves now, no less than our fathers then, are called upon to pledge our lives, our fortunes and our sacred honor to the end that popular government shall not vanish before our eyes; to the end that through its chosen representatives—from the policeman in our smallest town to the chief executive of our state, grappling with the fears and forces which beset it now, it may rid itself of inefficiency and waste and once more victorious ride the storm.

Albert Coates
The University of North Carolina

CRANGE PRINTSHOP, CHAPEL HILL, N. C.