INDIVIDUALISM AND LEGAL PROCEDURE.

An American youth, in a French government school, wrote home: "The teaching here is fine, but on the whole I don't like going to school; they boss you around too much. They teach here on the principle of driving it into your head; and if you don't move on the jump, both brains and body, the professor lets out a yell," etc.

It has thus taken but half a generation to breed into the bone of the boy the difference between French officialism and that American individualism which is the most important factor in American liberty, and which is also, perhaps, a large factor in our material prosperity.

But while American individualism marks the highest tide of political progress in the world, it seems as if it were largely responsible for one American unprogressiveness—viz., in legal procedure.

That same evil which the Preacher saw, thirty centuries ago, when he said: "Because sentence against an evil work is not executed speedily, the heart of the sons of men is fully set in them, to do evil," is still seen, bulwarked by Anglo-Saxon conservatism and legal precedent; in a country willing to try legislative experiments along almost any other line; a country of which Bryce says there is none other shrewder in perceiving, or prompter in acting, when a law works ill. Of the political "whips of time" which Hamlet enumerated, three centuries ago, he would, if he should visit America to-day, miss two—the oppressor's wrong and the insolence of office; but he would still recognize the third—the law's delay. Witness; the twenty days to file answer, which practitioner uses by writing in his diary for the nineteenth day ahead, "Draw answer, Jones case," dismissing the subject until then; the wait of months for trial, when witnesses may be gone, and certainly have forgotten; the excessive length of important trials; the excessive right of appeal, both civil and criminal; etc. The railroad, the factory, the department store, the physician, the newspaper, responding to the spirit of the age, all do their work on modern schedule

time; but the administration of justice, in larger cases, sticks to its mediaeval time-table.

Not because we do not recognize the evil. We know very well that time is of the essence of civil remedies and promptness the most important element in criminal punishment. We know that it seldom pays to sue; that delay fades true evidence, and waters false, truth being on the surface and perjury at the bottom of the well; that evidence before the coroner, or the examining magistrate, is crisp and spontaneous, since the truth comes out before its exact bearing appears, while by the time of the trial the witnesses have become non-committal or partisan; that, aside from all evidence, and as a matter of sympathy, all delay, after the first few days, enures to the unfair benefit of the accused, and that the very public, for whose benefit the law of punishment exists, comes to feel rather sorry for the poor fellow. The Georgia judge, who has recently said that the talk about the law's delay as an excuse for lynching is in the main without true foundation, may be right; and yet it may be true that if there were no law's delay there would be no lynching. The deliberation marking the trial of McKinley's murderer was a triumph for our institutions; but an appeal and stay of execution would have strained them.

But it is not, perhaps, so generally recognized that individualism is, in large part, the reason why we are unprogressive in legal procedure. There is the feeling that the individual should have all the rope he wants, both as to time and testimony, although the result usually is a bulk of evidence which obscures the weight of evidence and buries those decisive points upon which every case must turn in the end. We allow appeals from court to court in all cases, encouraging the litigious spirit and discouraging that submissive spirit which elections must have, or democracy will go to pieces; grant new trials, though substantial justice has been reached; are satisfied to allow ten guilty to escape, to save one innocent; insist strenuously upon the resolving of every doubt; all because the individual good appeals to us more strongly than the general good. Probably a suggestion that we might safely substitute for indictment by grand jury the accusation of the coroner's jury, or accusation by some elected official, ready to act at any moment; or that we might, with advantage to justice, compel the accused to testify, would be generally considered an attack on American freedom.

But does the safeguarding of individualism, in reality, require us to block the development of legal procedure? Should

we still be so afraid of our judicial machine as to fear speeding it a little? We are speeding it in minor cases, both civil and criminal, where various causes have combined to put a practical time limit both to preparation and to trial, thus excluding all but the decisive points; and it is standing the strain very well. We are speeding it, to the limit, too, in that element of criminal justice, that part of the punishment which is as important as the final sentence—viz., arrest. There are no ifs nor ands about the officer's "Come along with me;" and yet we find practically no abuse of the power.

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