case the demoralizing effects of lynch law are so great, and I might say so shocking, that any system which seems to make such a law necessary as a consequence of its own defects ought to be revised, so as to put an end to that terrible practice.[1] Perhaps lynching is not only due to the imperfections of the jury system, but also to the imperfect system of procedure, that causes delays in bringing about a trial, and often to the chicane and deficient preparation of the prosecuting officer.

Up to recent date lynching in this country was only practised in the Southern States, and almost invariably on negroes guilty of the revolting crime of using violence against white women, but some have occurred recently in Central States, like Ohio and Maryland, and even in Connecticut, one of the New England States, which shows that the practice, far from being checked, is on the increase.[2]

ing was reported in the papers, a man who would not give his name for fear of being prosecuted, addressed a letter to the *San Francisco Examiner*, signing it John Doe, published by that paper in its issue of November 29, 1895, in which he confessed that he was the only author of the deed, and that he had killed Sears in self-defence, Moreno being thus exonerated from all participation in the crime.

[1] The extent lynching has reached in the United States is truly appalling.

The report above quoted of the Committee of the Judiciary of the House of Representatives, containing several tables compiled by the Department of Justice of homicides perpetrated in the United States, shows (Table No. 3) that during 1895 there were 132 legal executions and 171 lynchings out of 10,500 homicides.

I find in a newspaper the following statistics about the number of judicial hangings and lynchings in the United States during five years. I am sorry that the years are not stated nor the source from which said statistics were taken, so as to verify them; but I quote them on the supposition that they are correct:

"According to statistics, which are probably reliable, there have been only 723 judicial hangings in that country in five years, and 1118 lynchings in the same period. During this same five years there were 43,902 homicides. The number of illegal executions are not hard to account for. When there are but 723 executions by law out of nearly 44,000 murders, it cannot be wondered that the people should so frequently take matters in their own hands. The reason for this phenomenal miscarriage of justice will be imputed by some to the extraordinary smartness of the lawyers, and by others to the morbid sentimentality which exists towards murderers and cut-throats of the worst class."

[2] In support of these views, I quote the following extracts from an editorial from the *Washington Post*, one of the leading papers of this capital, on the recent Urbana, Ohio, lynching, which took place late in June, 1897:

". . . And when that crime is committed in localities where the law does not provide what public opinion regards as adequate punishment, or where the people have learned by experience that the machinery of justice is sluggish and uncertain, human nature asserts itself as certainly and as terribly as it did Friday in Ohio. . . .

"Preach of this thing of lynching as we may, the custom will survive all denunciation under existing circumstances. Until legislatures provide penalties which public opinion accepts as adequate, and until the courts convince the people that they can be relied upon to dispense speedy and unerring justice, communities will continue to protect themselves by punishing, with their own hands, the one crime which is unspeakable and unendurable.

It is very remarkable that the jury system has not produced in England the same results as in the United States in so far as lynching is concerned. Perhaps that is due to the fact that trials take a shorter time in England than they do here, and that the punishment follows the crime without much delay.

The Mexican Jury System.—The force of example and the great credit which Anglo-Saxon institutions have attained in the world, on account of their regard for individual rights, have induced some of the American nations of Latin origin to adopt the jury system, and we have done so in Mexico. Señor Mariscal, our present Secretary of State, who lived in the United States from 1863 to 1877, as Secretary of the Legation up to 1867, and afterwards as Minister from Mexico at Washington—and who is an eminent jurist, a thorough student, and a careful observer—made a special study of the jury system in the United States, and when he went home and became Secretary of Justice under President Juarez's administration, he established, in 1869, a jury system in the Federal District of Mexico for criminal cases, changing it somewhat, so as to adapt it to the peculiar conditions of the Mexican character. He provided, for instance, that a majority of the eleven jurors composing our jury should render a verdict, while under the Anglo-Saxon system the unanimous vote of the twelve jurors is required. It was provided, besides, by the Code of Criminal Procedure for the Federal District and Territories issued in 1880, with a view to prevent the failure of justice, that, if, in the opinion of the presiding judge, the verdict were clearly against the evidence, he should so report to the higher court, with a motion to set that verdict aside, and if the higher court should sustain his opinion, a new trial should be granted, unless eight jurors had concurred in the verdict, in which case it should be final and could not be set aside. These provisions were somewhat changed by the Act of June 24, 1891, which was incorporated in the new code of criminal procedure of July 6, 1891, which requires that the jury shall be composed of nine jurors, that a majority of them shall render a verdict, and that the decision of the jury shall be final if given by seven votes. Even with all these modifications in the system, I have seen cases in Mexico where criminals have gone unpunished, because, through the eloquence of their attorneys, the jury has been influenced in their favor.

Under the system of jurisprudence prevailing in the Federal District of Mexico all the preliminary proceedings in a criminal trial, such as the examination of the accused, the taking of testimony, etc., takes place before the judge who presides over such proceedings without a jury; when this has been completed and the case is ready to be submitted, the jury is empanelled and the evidence is read to it, as set forth in the record already formed; the prosecuting attorney then

presents the charges, the defense is heard, and the witnesses of both parties are examined and cross-examined; thereupon the jury renders its verdict adjudging the accused either innocent or guilty, following substantially the practice under the common law of England and of the United States. In most of the Mexican States the old Spanish system of criminal jurisprudence yet prevails.

There are in Mexico some signs of reaction in regard to the jury system. Article VII. of our Constitution provided that all offences committed through the press should be tried by a jury which should decide as to the facts, and if the accused were convicted, another jury should apply the law and fix the penalty. But as the practical result of this system was that no offence of that kind could ever be punished, because the jury always acquitted the accused, our Constitution was amended on May 15, 1883, abrogating the jury system in these cases and submitting the offenders to the common courts, so that now offences committed through the press are tried and punished like crimes of any other character.

The Old Spanish System of Criminal Jurisprudence.—I often hear it asserted in this country that the proceedings under the Roman law are secret, and that the accused does not know what the witnesses have testified against him. This assertion is entirely incorrect, and often leads to very serious misunderstandings. One of the difficulties that the Spanish-American Republics have to contend with in this country, in cases where citizens of the United States are tried by the local judges in any of those Republics, is the great difference between their criminal legislation and procedure and the system prevailing in this country.

According to the Roman system, every criminal trial is divided into two stages; during the summary (*sumario*), which is the first, and the purpose of which is to ascertain the facts connected with the case, the testimony of the accused is taken down, sometimes without his knowing who may be the witnesses testifying against him, or even the crime with which he is charged. During this stage the accused is kept in solitary confinement, and not allowed to place himself in communication with others so that he cannot connive any scheme which might defeat the ends of justice, and while in such confinement we call him in Spanish "Incomunicado." During the plenary (*plenario*), or second stage, all the proceedings of the summary are made public; and thereafter all the proceedings are public, the accused enjoying the same rights which are guaranteed to him by the common law. To this latter statement there may be some slight exceptions, as, for instance, the fact that bail is allowed in only a few specified cases, determined by law, and never when the accused may, upon conviction, be liable to bodily punishment. It would take more space than is allowed in a paper of this character, to state the respective advantages of the two

systems, and I shall, therefore, confine myself to briefly mentioning the principal differences between them.

The secret proceedings of the *sumario* are much criticised in the United States, it being forgotten that the English common law likewise provides a secret proceeding very similar to the *sumario*. Before any one is indicted in this country, the case is heard secretly by a grand jury, a body composed of persons who, in some cases at least, are secretly designated. The grand jury listens to such testimony as is offered, or as it may deem sufficient, without permitting the accused to be present or to know what transpires; and if, in their judgment, there is sufficient ground, an indictment is found; and thereafter the public trial begins before the court. It is very difficult, of course, to make any general statement which will be accurately true with respect to all of the forty-five commonwealths which compose this Union, since, as is well known, each of them has its own legislation. In some States, as in New York, a preliminary hearing may take place before a police magistrate, who has in some petty cases power to inflict punishment, release the accused, or hold him for action of the grand jury. Sometimes, however, no arrest is made until an indictment has been found by the grand jury, or in cases of misdemeanor, for trial by a court of judges if the defendant waives a jury.

So far, therefore, as a proceeding under one system may be said to correspond to a proceeding under the other, it may be said that the *sumario*, in countries where the Roman law prevails, corresponds practically to a grand jury indictment in Anglo-Saxon nations.

In the Latin countries testimony is taken down in writing, and, after being read to the witness, is signed by him and by the judge, in proof of the fact that his statements have been correctly recorded. That gives a degree of certainty to the correctness of the testimony which cannot be obtained by a stenographic report; and it renders it impossible for the judge or opposing counsel to put into the mouth of a witness language different from that which he has actually used. When the summary is ended, all the testimony is presented to the accused for his examination; and the right is then given him to cross-examine the witnesses who have appeared against him. The cross-examination is an old Spanish proceeding which we call "careo," and which in Spanish means that the accused is personally confronted with the witnesses in presence of the judge, for the purpose of cross-examining them. It is therefore quite incorrect to assert that, because the *sumario*, or first stage of the trial under the Latin system, is kept secret, therefore the accused does not know anything regarding the evidence against him; the fact being that during the second or plenary stage of the proceeding he is fully informed of all that has been done, and is given ample opportunity to refute it, either by presenting his

own witnesses or by cross-examining such as have been presented by the other side, or called by the judge.

It should not be difficult to see which system of criminal jurisprudence is, on the whole, best calculated to do justice by ascertaining the real facts of the case, whether by a judge of long experience and proficiency in his profession, with no personal interest in the cases tried before him, or by a jury composed of men who have no experience in criminal jurisprudence. If the judge may sometimes be derelict in his duties, so also may the jury occasionally be controlled by their emotions. If the judge fails to do his duty, his failure will be corrected by an appellate court, as all cases must be reviewed upon appeal. For the improper verdict of a jury there is seldom any adequate remedy.

The Anglo-Saxon criminal jurisprudence is founded upon the principle that it is better to let one hundred criminals go unpunished than to inflict punishment upon a single innocent person. While the Latin system accepts that humanitarian principle, it is nevertheless better calculated to prevent the escape of a criminal unpunished.

Some American citizens who are tried in Spanish-American countries expect that the proceedings there will be conducted in accordance with the legislation of their own country, and, when they find it otherwise, they complain bitterly, considering the Latin proceedings as inquisitorial, outrageous, and even barbarous; and complaining that they are not tried under the laws in force in this country, as if the legislation of the United States should extend to foreign countries. My experience has shown me that this is sometimes the cause of serious difficulties and misunderstandings between the United States and some of the Spanish-American republics.[1]

Right of Appeal.—Another right guaranteed to the accused under the Mexican law, and which in its broadest sense is unknown to the common law as such, is the right of appeal; that is to say, the right in every case to have both the law and the facts reviewed by a higher

[1] As an instance of the kind of charges made against Mexico through the press by irresponsible parties, I will mention a case which recently occurred. A telegram dated at Omaha, Neb., on November 23, 1895, and published broadcast by the papers of this country, stated that Colonel W. A. Paxton, of that city, had received a letter from MacStewart, an old employee of his, who was under sentence of death at Parral, Chihuahua, Mexico, for shooting a policeman who was trying to kill him for a trivial offence, and stated that MacStewart desired to be placed in a court where he would be allowed to plead self-defence, which he pretended was not permitted under the Mexican law. What has already been said about the Mexican criminal jurisprudence is enough to show how entirely unfounded such a statement was.

Whenever I notice in the newspapers any complaint of this character, it is my custom to communicate the same to the Mexican Government and to request an official investigation of the case, so that I may rectify the statement if it should prove to be incorrect, or remedy the wrong before it assumes a serious aspect, if in fact there should be any real cause for complaint. In due course I generally receive an official statement which is almost always at great variance with the complaint. In this particular case, the facts turned out to be that MacStewart abused a policeman who was unarmed, and following him to the post-office at Parral, fired upon him without the slightest cause, killing him instantly; that, not satisfied with this, he killed the policeman's horse, and then fired upon the chief of police who arrested him. It further appeared that this was his second offence of this character, as he had killed before, in Mexico, a United States citizen named Rogers. In the case of Rogers, MacStewart was acquitted, and upon the trial for the murder of the policeman he was allowed to plead self-defence, but failed utterly to establish it, as all the witnesses examined, including an American citizen by the name of Davis, a friend of MacStewart's, testified that there had been no provocation on the part of the policeman, and that the accused had committed a wilful and wanton murder.

court. Under the Mexican laws this right is very broad. Our laws provide that no decision made by judge or jury condemning the accused can be executed until after it has been affirmed by a higher court. Not only is the accused given the right to appeal once, and sometimes twice, from any decision against him, but it is also made the duty of the lower court to send the case with the record for review to the higher court in cases where the convicted person does not appeal. Such is the practice under the Roman and Spanish law; but in the Federal District of Mexico, where the jury system has been adopted, the case goes to the higher court only on appeal of the aggrieved party, and said appeal only affects questions of law, and not the facts as stated by the jury, which cannot be controverted.

It is true that under the common-law system of criminal jurisprudence the accused or his lawyer can take exceptions to points decided by the judge during the trial, and that these exceptions may be reviewed by a higher court, but this can hardly be said to be an appeal, in the sense contemplated by the Mexican law, because the decision of the appellate court is only limited to those points which may be covered by the exceptions taken at the trial. It is true that in some States, as, for instance, New York, an appeal can now be taken which will bring before the court for review, questions of fact as well as questions of law; but in so far as this procedure has been adopted, it is a departure from the strict rules of the common law and an adoption of the principles of the Roman law, since, according to the theory of the common law, a jury can make no mistake, and its findings are therefore final.

Writ of Habeas Corpus and Amparo.—We have copied in our Constitution from the Anglo-Saxon system of jurisprudence the writ of *habeas corpus*, the great conquest of the Anglo-Saxons, which guarantees life and liberty to man, and which places under the control of the judiciary the otherwise arbitrary orders of those in authority; but we have gone considerably farther in this direction, and under the

name of *amparo* have extended this guarantee so that it is not limited to the protection of personal life and liberty, but embraces all rights under the Constitution—including the right of personal property, even when such rights have been defined by judicial decisions. If, for instance, a man finds that his property, or any other of his Constitutional rights, are interfered with, either by civil or military authority, or even by a judicial sentence of a Federal or State court, he may apply to the respective Federal district court having jurisdiction thereof, asking it for an injunction to suspend the act complained of, and finally to decide the case, either in his favor or against him, the decision always going for revision to our Supreme Court.

Rights Guaranteed by the Mexican Constitution.—Our Constitution of 1857 is so careful not to allow anybody to be kept in prison for any extraordinary length of time, that Article XIX. specially provides that when a man is arrested the judge shall hold a preliminary examination, and shall within three days from the time of his arrest decide whether there is cause to try him, or whether he shall be set at liberty. If the judge shall find that there is sufficient ground for continuing the investigation, the prisoner shall be remanded; otherwise he shall be set at liberty. In the first instance the judge has to sign what is called in Spanish *auto de prision formal*, meaning an order of formal commitment. In the second place the prisoner is set at liberty. This proceeding corresponds in a measure to the grand jury investigation under the common law. As I have already stated, in some States, like New York, a committing magistrate is authorized to examine the case as a preliminary step to the investigation of the grand jury. Where such a practice prevails, two examinations take place before the criminal charge upon which the accused is to be finally tried is definitely formulated, while under our system only one investigation is made, and even that must be completed within three days of the arrest.

The assertion, often heard, that American citizens tried in Mexico are not notified of the cause of their arrest; that they are not confronted with their accusers; and that they are not allowed to appear in self-defence, is in open contradiction to the express provisions of our statutes. As a matter of fact, Article XX. of our Constitution of 1857 grants the following guarantees to the accused, in criminal cases:

1. That the cause of the proceeding and the name of the accuser be made known to the accused.

2. That the preliminary examination of the accused must be held within forty-eight hours from the time he is placed at the disposal of the judge.

3. That he may cross-examine the witnesses who testify against him.

4. That such information as the accused may need for the purpose of answering the indictment must be given him, if it be in the record.

5. That he must be heard in his own defence, either in person or by some attorney of his own selection, or by both, as he may choose; and if he should have nobody to appear for him, he will be furnished with a list of lawyers appointed for such cases and given the right to select as his attorney any one whom he may prefer.

Length of Trials under both Systems.—I often hear the complaint, too, that under the Roman system the trial proceeds very slowly, and it is asserted that criminal trials in the United States terminate more speedily. I am not prepared to say under which of the two systems of criminal procedure the trial is sooner brought to an end. When the trial actually begins, it may take a shorter time in the United States, because once begun, it cannot be interrupted. It often happens, however, that a long time elapses before a case is brought to trial; and this time is longer when a new trial is granted. It should be borne in mind that most of the courts in this country hold sessions but for a few weeks or months at a time, and that only during these sessions do they hear cases. In Latin-American countries, on the other hand, the courts are open and working all the year round. Moreover, under the common-law system, the whole of the trial takes place before the jury, so that the exclusive attention of the court is necessarily devoted to that case. Only one case, therefore, can be tried at a time. In Latin-American countries a judge may try several cases concurrently, because, even where the jury system has been adopted, as it has in Mexico, a great portion of the proceedings takes place before the judge without the jury. As a consequence of this, trials in this country, by reason of the crowded condition of the dockets, are often delayed for months at a time, while in the Latin countries trials begin as soon as the prisoners are arrested.

Summary Proceedings under the Mexican Constitution.—There is a provision in our Constitution which is often misunderstood, and which has given rise to the idea that we sometimes administer justice in too speedy a manner and with a complete disregard of the forms of law established for the protection of human life. Our Constitution commences with a declaration of the rights of man, taken in a great measure from the declaration of the French National Assembly during the Revolution, which in its turn was in a great measure taken from the Declaration of Independence of the United States. These rights secure the most ample liberty and immunity both to the person and property of the inhabitants of the country.

While our Constitution was being framed, however, it was contended that, on extraordinary occasions, as in case of war or other serious danger to society, the rights guaranteed by the Constitution might stand very much in the way of inflicting needed and speedy punishment. To obviate this, the Constitution provides, in Article XXIX.,

that the rights of man, as guaranteed by that instrument, excepting such as secure his life, may be suspended for a short time in certain emergencies, provided that suspension be upon the President's initiative, and with the consent of Congress; and provided, further, that the suspension shall be applicable to a class; that it shall not apply to an individual; and that it shall last for a brief period. If it should be found, for instance, that the crime of derailing railway cars, either for the purpose of robbing them or for any other unlawful end, should become frequent, and if it should be found that the emergency called for extraordinary measures, the President would ask Congress for the suspension of the personal guarantees of this class of criminals for a limited period, say six months; and if Congress should sanction this suspension, a summary criminal proceeding would be established, for the purpose of inflicting punishment without delay, thereby deterring others who might be disposed to commit the same crime. At the end of the period fixed public confidence would have been restored, and there being no further need for the unusual measures adopted, the suspension of Constitutional guarantees would come to an end. It will be seen that our Constitution provides a speedy way of punishing criminals in extraordinary cases, without the unfortunate need which the condition of things has sometimes made necessary in this country —as in California in former years—of establishing a committee of public safety to preserve order, a proceeding which meant that the people took the law into their own hands, acting without regard to the usual legal forms, and oftentimes in a manner closely resembling lynch law.

Mexican Prisons.—Great complaints are often made in this country against the Mexican prisons, which are said to be uncomfortable, and sometimes considered filthy. It is a fact that some prisons in Mexico are in a very poor condition; but that is due to the limited resources of the country. A poor country cannot afford to build magnificent prisons; yet notwithstanding that we have to contend with small means, the States of Jalisco and Puebla have built spacious and comfortable penitentiaries at Guadalajara and Puebla, their respective capitals, and the State of Guanajuato at the City of Salamanca. Other States, as San Luis Potosi, and Nuevo Leon [1] are constructing new

[1] Mr. E. G. Coffin, Warden of the Columbus, Ohio, Penitentiary, who recently visited Mexico with the members of the Prison Congress which met at Austin, Texas, wrote a pamphlet entitled, "The Prison Congress, and our Trip Through Mexico and Texas," in which he says of the penitentiary in the State of Nuevo Leon, established in the City of Monterey, as follows:

"At the Monterey Prison we were shown unusual courtesies by the governor and Mayor Jules Randle. There are 400 inmates. We found the prison scrupulously clean, the food pure, what there was of it, but no work for the inmates except trinket and lace making, in a desultory kind of a way. The prison seems to be conducted on a system of a continuous school, and the plan of confinement is a solitary one."

penitentiaries, and the Federal Government is concluding the erection of one at the City of Mexico which will compare favorably with any in this country.

Prisons cannot be as comfortable as palaces or hotels, and even in this country, with all its wealth, advancement, and prosperity, prisons are sometimes very objectionable.[1] If we had two sets of prisons in Mexico, one for Mexican citizens and the other for foreigners, and if the former were more comfortable than the latter, the citizens of this country would have reason to complain; but if we treat them on an equal footing with our own citizens, and if we give the best we can,—that is, if we keep them in the same building, provide the same food, and extend to them the same conditions that we do our own citizens, I fail to see how there can be any reasonable ground for complaint.

The Common Law and Roman Civil Jurisprudence.—When we pass from criminal to civil jurisprudence, the superiority of the Roman law is incontrovertible, and a few remarks on that subject will be pertinent in this case.[2]

[1] The *New York Herald* of the 29th of October, 1895, published the following statement, made to the Board of Estimate by Miss Rosa Butler of the State Charities Waif Association, about the deplorable condition of Blackwell's Island Almshouse:

"Among these evils are the terrible overcrowding at the almshouse, where, even during the past summer, more than three hundred persons slept on beds made on the floor; unsuitability of the almshouse building, 1500 occupying buildings which have neither hot nor cold water, no bath-rooms, no lavatories; the wretchedly inadequate nursing at the almshouse hospitals, there being but one untrained and incompetent nurse for every forty patients; the unskilled and inadequate nursing on Randall's Island, where of 160 foundlings cared for in 1894, 119 died, and of 384 other infants—not foundlings—cared for without their mothers, 296 died; the dilapidated condition of the City Hospital, to which no repairs have been made for several years; the employment of workhouse prisoners in hospital kitchens; placing the erysipelas wards in the dock house, which is old, noisy, and infested with vermin; the lack of proper facilities of dealing with casual lodgers, and so forth."

If prisons that are in the heart of the city of New York, the largest and wealthiest of this country, and under its immediate supervision, are in that state, the bad condition of some of the Mexican prisons is certainly nothing extraordinary.

[2] In an admirable address that Judge Martin F. Morris, Associate Justice of the Court of Appeals of the District of Columbia and Professor of Constitutional and International Law, Admiralty, and Comparative Jurisprudence, in the Law School of Georgetown University, District of Columbia, delivered before the graduating class in 1891, he said, referring to the subject of the common law and the Roman law (pp. 30 and 31), the following:

"But, however it be in criminal cases, I have no hesitation whatever, after a long experience of it, to assert that, as a mode of determination of civil causes and private controversies, the genius of man has never yet devised anything more absurd than the organized ignorance and besotted prejudices of twelve men in a jury box. The man who has a good case is always desirous to have it taken away from the determination of a jury, and to submit it to the arbitrament of a court alone—to the arbitrament, in fact, of any one other than the twelve men in a jury box; while the dishonest litigant,