

WE HAVE TOO MANY LAWS, THINKS HENRY A. WISE

By EDWARD MARSHALL.

U. S. District Attorney Believes That as More Offenders Are Being Punished There Is an Awakening of the Public Conscience and a Promise of Better Things for the Country.

THAT we are punishing more sinners than we ever did before makes him believe the world is getting better. He thinks we have too many Legislatures, passing far too many laws. He thinks the public conscience has awakened wonderfully and that still more improvement is to be expected. And he ought to know about these things and the others which he talked about to me, the other day, for his name is Henry A. Wise, and he is the United States District Attorney who has had in hand the Government prosecutions in this district during the very period which he regards as one of real awakening.

But, perhaps, the most unusual observation made by this extraordinary public officer came when I was trying to induce him to trace back to its causes the American tendency toward lawbreaking. Therefore I shall call attention to that first. He traces modern business buccaniers straight back to actual, sea-going buccaniers of bygone days, and he believes that from the institution of slavery, dead since the civil war, have sprung many of our present faults, perhaps the worst of them.

The conversation had led me up to this remark: "Do you mean that the freedom conceived by our forefathers to be the most desirable thing for all humanity has been treated, in these later days, by latter-day Americans, as license? If that is so, why have we thus deteriorated?"

"I don't think so—I do not consider that mankind is any worse to-day than it was at the time of the formation of this Nation. If any change has taken place I am inclined to believe that it has been for the better—I do not consider that it is possible to track back to any particular."

"Definitely, then, you would trace our so-called tendency toward 'crimes of business' back to the slave trade?"

"Definitely I would do exactly that."

This opened a new line of thought to me. "Can we not, then," I inquired, "also trace some of our other faults back to our forefathers and the conditions under which they lived? Our conquest of the country was achieved through violence opposed by violence; our dealings with the Indians were violent; our earlier organizations for the maintenance of law and order were all violent and battling against violence. Are we not, then, rather excusable for our present predisposition toward violent crime and lack of regard for constitutional law and its authorities?"

"I think so; undoubtedly. I don't think we ought to criticize ourselves too ably for many of our weaknesses. We are a very young and very big child in the world of nations—overgrown, just beyond our years, perhaps beyond our wisdom. Our physical development has been out of proportion to our mental, and especially out of proportion to our moral development, if you please. Most of our sins may have been to some extent excusable in the past."

"But our present sins?"

"It is fair for us to realize and it is fair for the rest of the world to charge that we have now reached years of discretion. Being now properly grown up, it is high time for us to begin to lay aside the faults of childhood, particularly our childish violence. Things which were properly to be forgiven in the child must be forbidden and be penalized in youth and still more so in maturity. It is now time for us to begin to realize and to correct the errors which have been, perhaps, excusable in the past."

"And we are not doing these things?"

"Oh, yes we are. Within the past eight or ten years, particularly, there has been a marked change for the better, widespread and unmistakable. We have been treating each other and the world with more equity than in the old days; we have been punishing those among us who have failed to do so with a greater certainty and a greater measure of justice than we ever did before; we have been electing a larger proportion of honest men to public office than we used to, and we have been electing them by means less corrupt, if not in every case ideal."

"We are demanding now of the man whom we elect to office far more special fitness for the office which he is to hold than we ever did before. I think you will find that, as a general proposition, public officials have been far more conscientious of late years than they ever were before in the performance of their duties. They have been higher types of men. With a few exceptions I believe that New York City, for example, has never had a better set of men in office than it has to-day."

"And you think this movement toward reform is general throughout the country?"

"I think so. The daily news proves it, in fact. Everywhere the impulse is at work. Corrupt men are being driven to corrupt impulses. A man with a bad record must stay out of public office now. A few years ago we were electing men whose records were notorious to positions of the highest trust—and suffering accordingly."

"Such men could not to-day be elected if they were nominated; the party which dared nominate them would immediately die the death. Politicians, bosses, may put weak men forward nowadays, men over whose eyes they hope that they may find it possible to pull the wool. On an occasion arises, but they do not dare to-day to put forward men whose records are notoriously bad, as they did without the slightest hesitation but a few years since."

"The man whom the public seems to want in office to-day is the man who is alike fearless of his political foes and the political bosses on his own side of the fence and who will faithfully discharge his official duties. The public dictates to the bosses now to some extent in the old days the bosses did the dictating and the public humbly did their bidding."

"The mere fact that it is possible for men like John E. Wilkie, William J. Flynn, and others I could name to gain the positions which they hold and to retain them is a good sign. When a man in my position here can take his cases into court upon the evidence furnished to him by official employees without fear that any of it has been garbled, seized in any way, either for money or political bribes, then we are beginning to get into pretty good shape."

"A few crooked witnesses on his own side can dish the best case that any prosecuting attorney ever took to court. We do not have to worry over such things now in this department."

"When Flynn brings me a case I know he has brought me all there is of it, so far as he knows or can learn. I know that he is not bluffing, trying to throw me down by making a pretense at prosecution by presenting incomplete or intentionally inaccurate evidence."

"And what is true of Flynn is true of the men who investigate and assist in the preparation of all other cases for the Government. The mere existence of a man like Loeb in the position of Collector of the Port, a man who discharges the duties

required of him by law without regard to fear or favor, enforcing as he can the law as it is written on the statute books, and prosecuting every man he catches in wrongdoing, no matter what his politics, his fortune, or his pull of any kind, is a good sign.

"Edward Morgan, Postmaster of New York, is not only at the head of one of the largest Post Offices in the world but one of the largest banks in the world. I believe this Post Office handles daily more money than any one bank in New York City handles. He has 6,000 employees under him. And the Post Office is as clean and free from any taint of dishonesty as any piece of human machinery can be or ever was. All these are good signs, surely."

"Respectively of and in spite of politics, the municipal Governments, county Governments, and State Governments throughout the country show a higher average of men, morals, and methods than they ever did before."

"And you find your own experience in your own office indicative of better things?"

"Certainly. I am actually here to prosecute offenders, no matter who they may be, without regard to whether their offense is large or small."

"And your most important cases?"

"That depends. A casual observer may think a public case attracting wide attention is the most important, when, as a matter of fact, a number of small cases, less spectacular, may, in the aggregate, be of greater moment to the public morals."

"We have been handling different lines of cases, here in the United States District Attorney's office, the two most important of which have been the prosecution of frauds against the general public in the form of swindling schemes, worked through the mails, and frauds against the customs."

"Some of the important convictions in the Post Office cases have been of the President and officers of the United Wireless Telegraph Company. At about the same time came the conviction of D. B. Thompson, Hyndman, and Hartman, all of whom had been engaged in conducting alleged medical mail-order businesses. They were both swindling the public and promoting immorality. All were sentenced to long terms of imprisonment at Atlanta. And there have been so many other cases that it would be laborious to enumerate them."

"I dislike very much, however, to personally exploit the work which this office has done, and the credit for any accomplishments is due to the splendid men I have had the good fortune to gather around me as my assistants, and to the other Government employees engaged in the investigation and preparation of the cases."

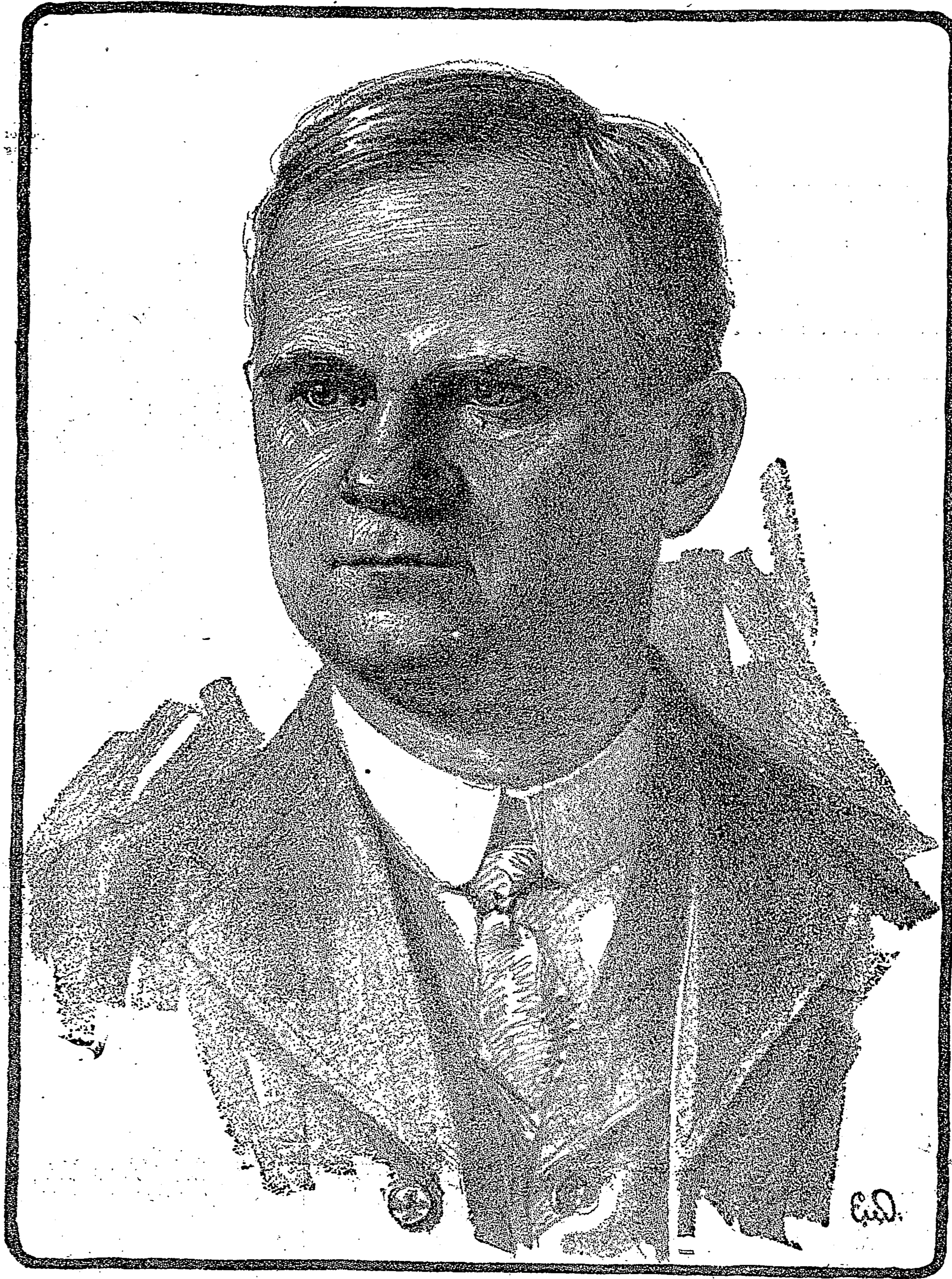
"There have been a number of the customs prosecutions. The last fiscal year, or the last court year, has developed several large cases which, in the old days, might never have been unearthed, or, if they were unearthed, might never have been prosecuted, for one reason or another."

"There was the recovery, for example, of seven hundred thousand dollars from the American Sugar Refining Company for sugar duties. These frauds had been going on for years."

"There was the prosecution of the Diveens, importers of works of art, antique and such, through which we recovered a million-and-a-quarter dollars in unpaid duties and a fine of the convicted culprits of \$35,000. There was the conviction of the Rosenbergs, importers of dressmakers' and milliners' materials, who were fined \$50,000."

"There have been convictions also, and in some cases jail sentences, for a large number of small offenders along the same general lines. These convictions are good signs of the times, for, while such frauds have been practiced in the past more frequently and more extensively than of late years, their perpetrators have not, in the past, been punished."

"The commission of offenses of the sort had literally grown into a habit. It is now recognized as an extra hazardous habit to acquire, and its victims are getting to be careful to resist its urgings. Our cure is working wonders. The facts that these prosecutions have, almost invariably, been successful; that the culprits have been forced to pay back to the Government the sums of which they have defrauded it, and, in addition, fines in a general way equaling those sums by way of penalty, have had a good effect upon the general public as well as upon that special portion of the public most directly interested."



U. S. District Attorney Henry A. Wise.

"Do fines prove to be effective as a punishment for such offenders?"

"I have tried to impress upon the courts the fact that jail sentences are justified and needed in all such cases. As long as a man can habitually violate the customs laws, knowing that if he is caught he will only have to pay out money as a penalty, that man, or any other man who is not particularly scrupulous, is likely to regard the matter as a gambler's chance and continue, when he can afford the money risk, to take it, as he would take on any other wager. He would be less apt to do this if he knew that in addition to his money loss in case he failed to hide his sin he would actually be sent to prison."

"Do not the unusual number of these cases which you have been prosecuting lately indicate what may be called a wave of crimes of this sort?"

"No; it only indicates activity of prosecutions." And as he said this United States District Attorney Wise smiled joyously.

"I do not consider the fact that we have prosecuted a great many people for this sort of offenses an indication that there

is, at present, any more of this sort of dishonesty than there was before," he went on slowly. "In fact, the prosecutions have nearly all been for offenses which originated many years ago and have been proceeding practically without interference until now."

"Now, between Collector Loeb and the District Attorney's office a very substantial crimp has been put into it, and that is a good sign, not a bad one. We have put the fear of God into the hearts of people who had long been engaged in that sort of transaction without any fear of anything and who, through their ability to gain un molested an unfair advantage over others, caused a great many men who would have preferred to be honest, but were not courageous enough to go to the prosecuting officers and complain, to seek the easiest way and meet competition from unscrupulous business rivals by stooping to unscrupulous business practices."

"Do I make that clear? I mean that there have been many men who have actually sinned unwillingly because it was the simplest way of doing business in New York and elsewhere in this country. Let

them once know that honesty will be protected and that, as well as dishonesty, it has its rewards, and they very much prefer to be scrupulously honest."

"Collector Loeb once told me," I suggested, "that the men in the Customs service were pleased, not displeased, when they found that they must do their duty honestly. Has it been your experience, also, that the average small public official would really rather be honest than dishonest?"

"Oh, surely. The average official employee feels real relief when he finds that, if he is strictly honest, he will be protected by his superiors against men with a pull, will be encouraged and rewarded. There have been importers, in the past, who could threaten Government employees with dismissal if they did their duty honestly without showing favoritism. That they can no longer do this has relieved the minds of many men in the service and made them not only honest but made them joyous in their honesty."

"And what is true in this and other parts of the Customs service is true in many other lines of our official and commercial life. As soon as honesty real-

ly becomes the best policy most men will take a long breath of relief and become honest."

"And this tendency is now very general?"

"I think so. There has been a broad, general awakening. There are more good men than had men in the human race. Perhaps the race may be divided into those who are strictly honest, those who are strictly dishonest, and a third class made up of those who would like to be honest, in a general way, but are weak in varying degrees, and likely to fall if strong temptation comes to them."

"That is my analysis of the human race. The third class, I imagine, is the largest of the three, which makes the plea, 'Lead us not into temptation' perhaps the most characteristic of all human prayers."

"Take, for instance, bank clerks. There is an occasional bank clerk, of course, who will throw up his job and take the chance of going hungry and letting his family go hungry rather than do, at the instance of a superior, something which he knows is wrong. But the majority of men, being confronted by such a situation, do as they are told, revolting, probably, against the necessity for doing so, but balancing their necessity against the wrong."

"They are good men at heart, to start with, probably, but, having temptation pushed harder and harder at them, day by day, they are of the sort who yield. They may become criminals before they finish."

"It is consideration of such men that ought to make us merciful. I do not believe that every man who steps aside ought to be punished and punished. I think his temptations should be taken into consideration, and that when there is the slightest indication that he sinned rather as the result of the existing system or through his necessities, he should be given a second chance."

"You think, then, that every man is capable of dishonesty, but that most men are honest preferentially?"

"Yes, nearly all. There is, of course, a small proportion of unfortunates who are born crooked, but we find many really good qualities even in such men sometimes. Our small sinners in official life are mostly merely weak, yielding when they are hard pressed. Most of our sinners are but little sinners, and most of their sins are sins which are forced on them or which they think have been forced on them."

"In politics, at least, then your blame is principally for the 'man higher up'?"

"In politics and elsewhere. Since I have held this office I have not, when I could help it, been prosecuting the men in the hand of the forger. Such prosecutions do no good and may do harm. We must get the forger himself, not the fifteen-dollar-a-week clerk who is as much his instrument as if he had been a mere machine."

"And you work against the corporations?"

"I handed him a printed list of corporations which have of late been prosecuted or whose individual officers have been prosecuted through his office."

"No corporation can do anything except through some individual or set of individuals. While technically, according to the theory of law, a corporation may be held for its illegal acts, I have never seen why the mass of stockholders, who generally are not only innocent but ignorant of the offenses which have been committed, should pay the penalty, as they must, pro rata, if the corporation, as a corporation, is penalized by fines."

"The sins of corporations must, at the bottom, of course, be due to wrongful acts on the part of individuals. Those individuals, the individuals who have actually done the wrong, should, in justice, be the ones who are sought out and punished for the crimes they have conceived. They should be individually punished. To penalize the innocent persons who have invested money in the enterprise is not justice, but injustice. We must reach and punish the real sinners."

"And is the law as it stands now sufficient for that purpose?"

"It is not my business, as a prosecuting officer, to inquire into or to question whether a law is wise or unwise, just or unjust, competent or incompetent, sound or unsound. I have had nothing to do with the making of the laws. I am a mere administrative, executive officer, charged with the responsibility of enforcing the law as it has been framed and adopted by the lawmaking power. I must do this without fear or favor, and deserve no especial credit for doing it."

"But is the law which I referred to, is

the Sherman law, to your mind, competent?"

"Yes; it is, I think, a competent law to reach the evils against which it was directed. It will reach most of the evils of industrial combination. It will, beyond a question, reach everything which its framers had in mind."

"Then you think our corporations are at present sufficiently restricted by our laws?"

"Well, I don't know. I have not given that subject sufficient consideration to be able to answer intelligently. The Sherman law was not aimed exclusively at corporations. It was directed at the individuals who form corporations, as well as at the individuals who form combinations other than corporations in restraint of trade. Members of a partnership, or even individuals who violate the Sherman law as definitely as corporations can. I prosecuted eighty-three individuals under it in the month of July. I did not prosecute any corporations."

"And no corporations were involved?"

"These prosecutions were of individuals connected with corporations, certainly; but the prosecutions were of the individuals—as they should be. They were charged with having caused their corporations to violate the Sherman law."

"There are under indictment here now a number of individuals charged with violations of this law in connection with the paperboard industry, and there are indictments against a number of men charged with conspiring to restrain trade by forestalling the cotton crop. A number of individuals connected with the so-called 'Turpentine Trust' were recently convicted and sentenced to jail terms in Georgia under the Sherman law. They have appealed to the Supreme Court."

"I don't know that we need any further legislation. I am inclined to think that there is an abundance of legislation now upon the statute books, Federal and State, throughout the country, to regulate, in one way or another, the conduct of mankind in every walk of life—not only every walk but every step."

"If these laws are observed this country will be a fine place of residence, and if they are enforced they will, of course, be observed. That they have been violated and that the violators have not, in the past, been habitually punished, does not indicate the presence here of an abnormally large proportion of natural wrongdoers."

"Most of the men, I fancy, who have defied such legislation as the railroad rebate law and the Sherman anti-trust law have done so without the conviction that in so doing they were committing any moral wrong. But I think that such men are awakening, in these days, to a realization of the fact that they were actually sinning."

"And you believe that as the realization that such acts are wrong becomes acute with them such acts will get to be repugnant to them?"

"Yes, to many of them." Mr. Wise paused, smiling. "And there are others who have recently decided and more who are presently will conclude that for the good of their own skins it will be wiser to observe the laws whether or not the thought of sin is horrid to them."

"Do you class the man who takes the public's money through a violation of what we may define, for present purposes, as our business statutes with the man who takes the public's money with a dark lantern and a jimmy?"

"If the violation is conscious and willful, then why not? I do not regard any man as a lesser offender against society because he violates one statute rather than another. Any man who willfully violates any law, more or less, an enemy to society. Any second offender should be summarily and severely dealt with."

"But the public at large has taken convictions of men for violations of such laws too lightly. They have not lost caste. Their punishment has been largely technical, because the public did not look on them as criminals."

"Only the man who had committed murder or done highway robbery or some other crime of a horror as they are shunned by our society. The man who has committed other sins not definitely mentioned in the Ten Commandments has been too lightly treated."

"Breaches of law in general are not regarded as crimes of a horror as they are for instance, in Great Britain; there has been too much of the idea among our public at large that certain laws are only made to reach certain persons other than themselves. That is a wrong idea altogether. We have not generally been a law-abiding people."

"Why is it that an Englishman has more respect for law than an American has?"

"They have fewer laws over there, to start with, and before they put a law upon the statute books they give it far more careful consideration than we do. Once on the statute books, having been thoroughly thought out, the public regards it with respect, looks on it as a thing which must be reckoned with."

"Does this mean a better system or a better people?"

"Well, I don't know. The fact that they are older and more settled gives them an advantage. I do not know, but I imagine, that they have had less dishonesty at their elections than we have at ours, and that might mean a higher type of men generally in office. It would also mean a higher general tone of honesty. Political dishonesty became a habit, with us, and, of course, the habit spread, and you cannot expect a man to cheat at the ballot box and be honest the next day behind his counter."

"We need, I think, fewer Legislatures and those less frequently assembled; we need a rest from lawmaking and an opportunity to learn exactly what the laws already made amount to so that we may learn to observe those laws before they are repealed and new ones passed in substitute of them. I do not understand how anybody can justly be expected to keep himself advised on all the laws that are passed by forty-odd States in addition to those passed at Washington."

"Have you any practical suggestion to advance along these lines?"

"I am afraid that if I answered that I should be placed in the Hamiltonian class of Federalists."

"But all the signs are hopeful. In municipal management, in the State and National Government, in everything throughout the country, there is evident a tendency toward the selection of men of high class and unimpeachable honesty for positions of public trust. All the way along the line the people are demanding the correction of the evils they have tolerated and in the past participated in. We are waking up. We are getting executive and administrative officers of really high character. The next thing for us to do, and the next thing which we shall do, will be to clean house in our Legislatures."

"And when we have done that?"

"When we have done that we shall have as good a form of government as we can hope to have while human beings are as they are at present constituted."

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