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REFORMS OF THE JURY-SYSTEM IN EUROPE:
FRANCE AND OTHER CONTINENTAL COUNTRIES

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Turning now from the English system to the Continental ones, we find that the French type of jury has served as the model for one group of countries. But to assume an exact imitation would be misleading, for each country has made alterations more or less radical. The system has not only evolved, but has been transformed and diversified. In some countries, the assessor-system is not much more than a reformed jury-system; certainly the assessorate in Germany, Austria, and Swiss Berne, is far removed from the original jury-type. The French system has lost much ground. Even in its own country, it has only maintained itself at the cost of successive reforms, and under the pressure of general evolution it tends to enter the class of assessorates. The original system is hardly recognizable in any feature.

So that, though one may still speak of the "continental system," the term no longer signifies what it did in the preceding century. It has departed radically from the English type; for it is not the result of the same institutions and ideas. But though the fundamental type is now different, yet there numerous correspondences and similar tendencies—notably the principles of appeal and of limitation of jurisdiction.

And so, taking up the Continental countries in turn:

1. *France.*

The French system (as already stated) began as an imperfect imitation of the English system, but has since then departed more and more from its model. Very early it gave up the grand jury. Then in 1832 it authorized the trial jury to take into consideration extenuating circumstances, which thus allowed it (indirectly) to

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share in determining the penalty. Then in 1881 the presiding judge's summing-up was taken away. And finally, in 1932, it formally allowed the jury to meet with the Court in deciding upon the penalty and the legal defenses. Now none of these changes (except as to the grand jury) have taken place in England. The judge's summing-up is there deemed indispensable to aid the jurors; and no need has been seen for enlarging the jury's power beyond the mere fact of guilt. Thus the clear division of tasks is assured, and at the same time a close collaboration under the judge's supervision.

The importance of the latter element is of course everywhere understood, but the several countries differ widely in the ways of securing it, due to the difference of traditions in procedure.

2. *Belgium.*

The Belgian jury is sometimes classed with the French jury, because of the general identity of the two legal systems. But, though Belgium has preserved the French Code, it has in important respects adhered to the French jury-system. In the first place, it did not adopt the change of 1832, in letting the jury consider extenuating circumstances (though it did abolish the judge's summing-up, as far back as 1831). In the next place, the reform of 1867 limited the jury-jurisdiction by allowing the criminal branch of the Superior Court (by unanimous vote) or the Court of indictment (by majority vote) to transfer a case to the Magistrate's Correctional Court (for misdemeanors) because of legal defenses or extenuating circumstances, instead of sending it automatically to the jury-Court. This enables a rational selection to be made, avoiding, on the one hand, the risk of unjustifiable acquittals (especially in crimes of passion) and on the other hand the risk of unjust condemnations for unpopular offenses that are really not serious. This reform-measure gave marked flexibility to the system, and it has been much employed, thus reserving the cumbrous mechanism of jury trials for charges of heinous crimes only. It constitutes a marked difference between the Belgian and the French systems.

In actual practice, indeed, the French prosecutors have aimed to attain the same result by so framing the charge as to bring to the Correctional Court those offenses which are indeed legally crimes but on the facts do not merit the heaviest legal penalties; for example, by charging indecent solicitation instead of assault with

intent to rape,[2] larceny instead of robbery, false representations instead of forgery, and so on. This expedient is necessary in order to keep justice from being blocked by acquittals. But it is not strictly legal, and it is used only within limits—*e. g.*, not for murder or arson. Moreover, it runs the constant risk of having its legality questioned. But French law still remains almost alone in not limiting the jury's jurisdiction to the most serious offenses.

3. *Austria, Germany.*

In Austria the last-named limitation has long been in force, most recently by the law of June 5, 1920.[3] In Germany it was effected by the Judiciary Act of 1877 (revised in 1924). The jury-Courts deal only with the most serious offenses (*i. e.*, in general, punishable with more than 10 years' imprisonment)—murder, assault with intent to kill, arson, robbery, sedition, and press-offenses. Other offenses go to the correctional court—in Austria, the Assessors-Court ("Schoeffengericht"), and in Germany to the Regional Criminal Court ("Land-gericht," which has assessors since 1924) or for minor offenses to the Assessors Court (which ranks lower). In Germany, offenses subject to jury-trial may be tried before these other Courts, if either the prosecutor or the accused request, or even before a police court, "amts-gericht" (since 1924, a judge only, without assessors).[4]

But the limited jurisdiction of the jury-Courts has in these two countries not failed to reveal the disadvantage of a sharp separation between court and jury and the needlessness of the traditional number of jurors. Since assessor-courts also are in vogue, a comparison of the two forms of institution has been readily available, and not to the credit of the jury-form.

Not that the assessors-courts have given entire satisfaction; the complaint is heard that some of these laymen (appointed for a year only) take no interest and help little in the deliberations, and on the other hand that some of them are too crude or opinionated. But nevertheless this institution, half-professional and half-lay, op-

[2] These specific offenses are not readily translated into exactly corresponding categories.—[*Transl.*]

[3] In Poland also, recently, and in Czechoslovakia it is impending; in Spain also by a special expedient.

[4] The judiciary organization in these two countries is somewhat complex. [The author's footnote describing the various jurisdictions is here omitted.—*Transl.*]

erates without confusion or delay or irregularities. The contrast is notable with the complex apparatus of the jury—the 12 men drawn by lot at each session, left to their own devices for answering complicated or obscure questions, lacking any preparation, lost in the legal technicalities, and finding "no" the easiest way to answer all the specifications. It is truly depressing to observe the juries exonerating some of the greatest rascals, without any apparent reason, while the casual offenders, tried by the magistrates in the lower correctional courts, are given the usual penalties. This explains the general tendency to put an end to this anomaly by transforming the jury-courts into assessors-courts.

In *Germany* the first important reform was made by the Act of March 22, 1924. The Committee report, proposing the change, referred to the jury as "an importation from France" and "an anomalous graft in the evolution of German law," and favored the assessor-system as being an historic national institution, still in force in many provinces. So the jurors were reduced to 6 in number (3 to be males) and were united with the Court, composed of a presiding judge and 2 others of the Regional Court. Thus both judges and laymen form a single bench, passing upon both guilt and penalty; the jurors now becoming assessors. The tribunal does indeed keep its old name of jury-court ("schwurgericht"), and it is still distinct from the assessor-Court ("schoeffengericht," having lower jurisdiction). The assessors in the latter court, appointed for one year, are drawn by lot, though there is a certain amount of selection, in order to obtain citizens whose occupation permits them to perform their arduous duties. The assessors in the jury-court, however, serve for one session only; this feature marks the great difference. Thus the new German system comes closer to the typical assessor-system, though it must not be identified with it.

The result has been satisfactory, so far as can be judged. German opinion is that criminal justice has become more simple, more speedy, and more regular, perhaps also a little more severe. No unfavorable criticism is heard. One might infer that this is because the system fits the German spirit, and might ask whether it contains adequate guarantees of independent judgment. But this question involves the mentality of a people, the political system, and in part the method of selecting jurors. Even if the orthodox English jury were adopted in Germany, there would still remain a certain tendency of subservience to public authority.

In *Austria,* two steps of reform have been taken, in succession:

(1) By the decree of March 24, 1933, the number of jurors was reduced to 6 (men or women), and by decree of January 26, to 3, and the jurors were united to the Court. The procedure was changed in two respects. (a) The presiding judge presides over the deliberations and the votes of the jurors. Furthermore, he may if he deems fit sum up the points of the evidence and the arguments, pro and con, without expressing his own opinion; he must also explain the nature of the charge and its application to the evidence, and also the penalties involved. (b) The jurors vote before the judges, in alphabetical order; they need not follow the precise terms of the charge; and each may state the reasons for his vote.

(2) Secondly, by the decree of Aug. 28, 1934, the jurors become genuinely assessors. They are drawn by lot from a select list, and they serve for a year; they must be 40 years old or over, must lack any criminal record (even of a political offense), and must have shown themselves to be well-tried patriots.

This revised system (apart from the last-named requirement, which is due to current political conditions) is regarded as superior to the former one, especially in its union of Court and jury both for guilt and penalty. Austrian authorities are convinced that the results have been excellent.

4. *Switzerland.*

In *Berne* the reform enacted in the new Penal Code of 1928 has a special interest; for it was inspired by the German reforms, and yet does not adopt the assessorate. The jurors are selected as before; but their number is reduced to 8, and they are united to the Court, for deliberating and voting on all the issues involved. Only questions of law are reserved for the Court (composed of 3 judges from the Criminal Division).

Nominally this jury-court has jurisdiction for all crimes (punishable by imprisonment). But two expedients limits its scope to serious crimes. (1) The indictment-court may send the case to the ordinary criminal court (of judges only, or one judge), when the offense is not a political one and the accused has made an apparently reliable confession and requests the transfer of the case; and (2) when the case admits of a choice of penalties and the authorities believe that a verdict of guilty would be followed by the lesser there are extenuating circumstances. This way of proceeding unites penalty only, or (in any kind of a case) when they believe that

advantageously the provision of the English system, in cases where the accused is ready to plead guilty, with that of the German system, where the accused requests such transfer, and the Belgian system, where the indictment-court perceives extenuating circumstances. In all of these cases there is no longer need to resort to the jury-court; on the contrary, the ordinary procedure of the correctional courts is better suited to the everyday offenses. The accused himself may be interested to avoid the unpleasant publicity, the shame, and the uncertainty of a jury-trial; and this explains why the accused frequently requests this transfer.

This reformed jury-system, with its complete collaboration of judges and jurors, has given satisfaction, as being more simple and convenient and giving more uniformity of justice. Both the magistrates and the public have approved it. Exception may here be made for the advocates who have specialized in the old style of jury-trials; the style of advocacy must accommodate itself to the tribunal, and it is unpleasant to change one's habits, especially when they have been successful; the emotional and theatrical style is now at a discount. The new system provides a more dependable justice, lacking in those surprises and unjustifiable acquittals which too often have marked the capricious verdicts of jurors when left to themselves.

This does not mean that the new assessor-courts show themselves too ready with verdicts of guilty. Far from it. In a recent typical case, which aroused great public interest, a husband was charged with wife-murder by poisoning. On a trial by jury (of the old style) he was found guilty, but on weak circumstantial evidence. The verdict having been set aside on appeal, the charge came on again for trial before one of the new style assessor-courts (established during the interval), and here he was acquitted, though no new evidence had developed. Thus the new-style court showed itself more strict than the old-style one in requiring proof.

In democratic Switzerland there has been no apprehension that the jurors' independence of view would be weakened by pressure from the professional judges in their joint deliberations. The specter of such a fear is sometimes invoked against reform-proposals; but it is only conceivable under a dictatorial regime where the judges are too dependent on government favor, or when the number of jurors is reduced too low. The Berne plan corresponds substantially to the resolution of the Palermo Penal Congress of 1933, recommending that, where a unified tribunal of judges and jurors

is established, it should include at least twice as many jurors as judges, so the jurors could always have a majority and the judges could have only a power of advising.

In several other Swiss cantons only minor changes have been made. In *Zurich, Vaud,* and *Geneva,* an accused pleading guilty may waive jury-trial; in Zurich he goes before the criminal division of the Superior Court. The presiding judge's function has been amended; in Lausanne, he answers publicly the jury's request for comments; in Zurich, he gives them instructions on the law; in Geneva, he is present in the jury-room to answer questions.

5. *Hungary.*

The jury was here first adopted in 1869 for press-offenses only, then extended in 1897 to include other specific offenses—treason, rebellion, interference with personal liberty, murder, arson, robbery, etc. In 1914, just before the World War, the procedure was changed so as to allow the presiding judge to take part in the jurors' deliberations, but without vote, and to allow two of the jurors to be delegated to take part with the Court in determining the penalty (the jurors voting first).

This original scheme, which allowed a certain degree of collaboration without taking away the independence of either body in their respective functions, was progressive for that period. Unfortunately, it was installed at a time of war-disturbance and in a community not well-grounded in democratic institutions. The judges were criticized for misusing their influence in the privacy of the jury-room. But the experiment had only a short life; a decree of 1919 suspended the jury courts and temporarily transferred to the usual judge-tribunals the jurisdiction over all kinds of offenses.

Since that date, the jury-system in Hungary has remained nominally in force, but is not used. Democratic politicians, and also advocates of legality, lamenting the "castration of the jury," have endeavored to get the jury-courts restored to life, especially on the ground that the Hungarian judges are not sufficiently assured of independence in political cases. Moreover, the Twelfth Congress of Hungarian Lawyers in 1928 resolved (by a majority vote) in favor of the 1914 system as superior to the present practice.

6. *Czechoslovakia.*

This new State came into existence with the Austrian system in force in Bohemia and the Hungarian system in force in Slovakia. But changes were soon undertaken.

The Act of March 19, 1923, on the safety of the republic, and that of May 30, 1924, on press offenses, removed certain political offenses from the jury-courts. Another Act of March 19, 1923, assigned serious political offenses to a new branch of the Supreme Court, and press offenses to a special court composed of 3 professional judges and 2 lay-assessors. Then the draft revised Code of Criminal Procedure of 1929, unifying the national law, restricted the jury-courts to offenses punishable with death or more than 10 years' imprisonment. Other offenses were assigned to a bench-court, though minor offenses (not entailing more than 5 years' imprisonment) could be tried by a single judge of that court, if the public prosecutor did not ask for a sentence of more than 1 year. And finally, the government on recommendation of the Supreme Court could temporarily suspend trial by jury, for not more than a year (Act of April 5, 1920).

As to procedure, this draft code discarded the presiding-judge's summing up, but required him to expound the law of the case to the jurors at the opening of the trial—a measure needed for avoiding misunderstandings, but quite inadequate by itself. So, further, to help the jurors during their deliberations, when they most need help, the judge (as in the Hungarian Code) with the clerk, attends and presides over the jurors' deliberations (but without a vote) on the issue of guilt. It thus appears that the Czechoslovaks were not deterred from this measure by the Hungarian experience as to the undue influence of the judges; and indeed in a country of liberal institutions, where the magistrates are independent and self-respecting, such fears would be groundless. However, in the Czechoslovak draft, to allay the apprehension of such influence, the jurors vote by secret ballot. On the issue of the penalty, two jurors delegated by their fellows (as in the Hungarian Code) sit privately and vote with the judges. And finally the draft provided (as in the Austrian Code) that the judges, if unanimous, could set aside the jurors' verdict of guilty, if it was deemed to be erroneous.

Furthermore the problem was considered of the jury's occasional inclination to bring in a verdict of not guilty, because of their reluctance to authorize the death-penalty. The Austrian Code (like most of the other Continental ones) makes the death-penalty mandatory for certain offenses; while the Hungarian Code allows a choice between the death-penalty and imprisonment for life or a long term. The Czechoslovak draft adopts the Hungarian measure. However, a recent Act No. 91 of 1934 has devised a novel expedient

for placating jurors' sentiments; the jurors and the entire bench of judges meet and deliberate on the choice between death and imprisonment.

7. *Greece.*

Here the Constitution and the statutes have reserved to the Court of Appeal certain offenses deemed to require strict repression—piracy and barratry (the Constitution and the Act of March 30, 1845), embezzlement of funds of the Treasury or of certain public institutions such as the National Bank (Act of Dec. 31, 1924). Nevertheless, there is still heard complaint of the capricious action of juries, in spite of the recent improvements in the method of selection (Act No. 5026 of June 18, 1931). Citizens show so little inclination to serve, especially in important cases, that sometimes it has proved impossible to impanel a jury; and severe penalties for evasion have been threatened (by Act No. 6266 of Aug. 31, 1934, a fine of 20,000 drachmas may be imposed).

So that the Code Commission of 1932 (meeting of May 20) recommended replacing the jury-court by the assessor-court. Such a change, however, would require a constitutional amendment. Hence the new draft Code of Criminal Procedure of 1934 stops with certain amendments to the present system. Following the Hungarian Code, it allows the presiding judge to sit at the deliberations of the jurors, but without a vote; and they vote by secret ballot. The jury sit with the judges, in open court, to advise on the penalty. And the judges, if unanimous, may set aside a verdict of guilty as erroneous.

8. *Poland.*

This new State, coming into existence at the close of the World War, and formed by consolidating regions from three pre-existing States, found itself faced with a heterogeneous judiciary and an administrative situation which made unification a difficult problem.

The western regions (from Prussia) had the German jury-courts and assessor-courts. The southern regions (from Austria) had an analogous system. The eastern regions (from Russia) had a system of class-representation and (after 1917) the soviet system of popular assessor-courts. Thus lacking national traditions, the new government adhered to the dominant system, that of jury-courts with modifications. Their jurisdiction (closely resembling

the Austrian and the German methods) was limited (Art. 83 of the Constitution of May 17, 1921) to serious offenses (punishable with more than 10 years' imprisonment) and offenses deemed political; and the presiding judge was a passive participant in the jury's deliberations and vote. But the statute effecting the constitutional provisions limited its scope temporarily to the (formerly Austrian) province of Galicia; and thus far (by 1933 at any rate) this scope had not been enlarged.

The assessor-courts were thus discarded; for the brief experience with them in the troublous initial period had not been satisfactory. The first national Polish judges had apparently taken a different attitude from the former (Austrian) local judges; hence some clashes between the two constituent elements in the tribunal. Assessor-courts lasted till 1927 (with broad jurisdiction) in the appellate districts of Warsaw and Lublin, but were then abandoned, and their jurisdiction was divided between the jury-courts and the judge-courts.

9. *Italy.*

Here, on the other hand, the jury-courts have been completely transformed into assessor-courts. Italy had had the French system, but by the decree of March 23, 1931, this was abandoned. In its place was put a bench-court composed of 2 judges (the presiding judge to be a member of the criminal branch of the Court of Appeal) and 5 assessors, appointed for 2 years and taken from classes of citizens regarded as specially qualified.

The selection of these assessors is carefully made, and their appointment and dismissal are entirely in the hands of the government; so that the system is too closely tied up with the Fascist system to be likely to spread beyond Italy. Moreover, it is regarded even in Italy as a transitory method only, due to evolve into an ordinary judge-court, when the inefficiency of the assessors (already asserted by criminalists) is sufficiently demonstrated. If we are to accept those assertions, the assessors follow too readily the views of the judges. But this lack of independence may well be due to the mode of selection.

10. *Soviet Republics.*

A complete survey must include the United Soviet Socialist Republics, though their communist system stands apart by itself and cannot serve as comparable with those of other States. The

Revolution has substituted a popular working-class assessor-court, replacing not only the old regime's class-representatives in the regular judge-court but also the jury-system, which was limited both as to jurisdiction and as to the panel of eligibles.

The typical trial tribunal is now composed of a presiding judge and two assessors. These courts are in three grades (since 1922)—"people's," "government," and "superior," their jurisdiction depending on the seriousness of the offense, which itself is determined by the peculiar Soviet political theory. The government courts take most of the important trials; but the people's courts are the courts for ordinary justice. Each of the two higher courts (apart from its jurisdiction as a trial court) is a court of appeal from the one below. Assessors and judges alike, in all the courts, are strictly under the control of the Executive Committee, like all other officials in this peculiar country.

11. *Bulgaria.*

In this country, and in some of the remaining ones, where there had been no tradition of an assessor-court but only a diluted jury-system, the process of change has been radical, abandoning any form of the jury. In Bulgaria, formerly, 3 jurors sat with the usual 3 judges, in the trial of serious crimes, on the issue of guilt. But in 1922 the jury was discarded; there are now professional judges only.

12. *Portugal.*

Here, formerly, the influence of the English model was apparent; the single judge sat with 9 jurors and summed up the case for them. But in 1926 (Decree No. 12353) the jury was discarded. There is now only a specialized tribunal of 3 professional judges, whose decision is final except on questions of law. Why the appeal should be thus restricted is not easy to understand, inasmuch as all other judgments of trial courts, notably the petty courts, are subject to revision.

13. *Baltic States.*

The new States of Latvia, Esthonia, and Lithuania, though preserving the former Russian judiciary system, have discarded the jury entirely.

14. *Yugoslavia.*

This new State retained temporarily the former judiciary system (including the diluted Serbian jury-system), in which the jurisdiction was limited and the presiding judge took part as adviser in the jury's deliberations. But the 1929 Code of Criminal Procedure, unifying the law of the consolidated regions, discarded the jury for the whole country.

15. *Netherlands.*

In the Netherlands the jury was introduced with the Napoleonic Codes. On obtaining national independence in 1813, the Codes were retained; but the jury was discarded; and no one has ever proposed its restoration. The practical Dutch mind does not find it congenial. The administration of justice in that country may be deemed a model for others. And in fact it is perhaps the only country where crime is receding.

16. *Luxembourg.*

Here, as in the Netherlands, the jury came in with the Napoleonic Codes, but went out permanently in 1814. The so-called "jury-court" is merely a surviving name.[5]

17. *Switzerland.*

The Cantons where one hears of a movement for reform are those which have most fully preserved the original jury-system—Zurich, for example. On the other hand, there is no desire to introduce the complicated jury-system in those numerous cantons which maintain (under one or another name) the assessor-system.[6]

In Tessin, where they still get along with the jury, this is because the system has been much simplified (Act of 1895). The 3 professional judges sit with 5 jurors, and the issues of guilt and of penalty are voted upon by all members. The jurors (3 in the petty courts, 5 in the higher ones) are elected by popular vote from the citizen-body. The bar of that Canton, however, is proposing that the jurors' authority be restricted to issues of fact.

[5] See Note 3, p. 20 (May-June Number).

[6] In Switzerland the assessors play an important role; here the democratic traditions, where all citizens eagerly take part in public affairs, have developed a different mentality.

18. *Denmark.*

In this country, the system is different for the metropolis and the provincial regions.

The jury was introduced in 1849. In 1879, they reverted to a juryless court of judges for all offenses (though the judge was attended by 2 "witnesses," who could vote in capital cases only, and then were increased to 4). But in 1919 (Act of 26 March) a genuine jury-court was re-established for Kopenhagen and Viborg, and in 1933 this tribunal was termed "Landsret."

Its jurisdiction includes offenses punishable by more than 8 years' imprisonment—robbery, infanticide, etc. The presiding judge frames the issues affecting guilt on the facts, and sums up the evidence; the juror's answer Yes or No to the interrogatories; and 8 votes are necessary for a finding of Guilty. In the ordinary cases, where the accused has made confession and this is corroborated, or in case no mandatory penalty applies, he may be judged with his consent in the lower court by a single judge. A jury's verdict of guilty is not conclusive; for the court may direct the case to be re-tried before another jury; and there is ample opportunity for revision by the Supreme Court.

19. *Spain.*

Here the successive revolutions have left their mark on the judiciary organization.

In 1923, the Directorate abolished the jury. In 1931 it was restored by the Republic, as an institution appropriate to a democracy. But it was restored in modified form only. The number of jurors was reduced; women were made eligible, in issues involving sentiment; challenges were limited; the presiding judge no longer summed up; suspensions of the public hearing were forbidden. The verdict was made more objective, by restricting it to the facts forming the elements of the crime, instead of "not guilty" in general. After the verdict on the facts, the jurors are consulted as to imposing the maximum penalty and on commutation of sentence.

It is now proposed to allow an appeal to a jury composed solely of specialists,—an interesting innovation. On the other hand, the jurisdiction of the jury-courts has been restricted by various decrees and by the Act of July 27, 1933, due to anarchist-syndicalist insurrections; the ordinary criminal court now takes (in addition

to forgery and burglary which it formerly had) robbery, bombing, terrorist acts, and other offenses.

20. *Japan.*

This oriental country, inspired by the European codes and yielding to democratic ideas, resolved at last in 1923 to install the jury-system. But great caution was shown in making this innovation. In general the jurisdiction of the jury-court is limited to offenses punishable with death or imprisonment for life. The accused may in all cases refuse jury-trial, and this is what is more often done. On request of the accused, the jury may also try offenses punishable by more than 3 years' imprisonment; but in such case the accused pays the costs, so that such requests are rare. Certain offenses, however, can in no case be tried by jury,—attempts on the Emperor's life, high treason, disclosure of military secrets, and offenses against the public safety or peace; some of these go directly to the Supreme Court (a division of 5 judges). The jurors number 12. At the close of evidence and argument the presiding judge sums up the evidence and the issues (as in England and the United States).

But, despite the flexibility of this type, the jury-system has not obtained popularity. It is alien to the national traditions; and the judge-courts enjoy an unquestioned prestige. The accused persons seem to prefer the more discriminating tribunal, where moreover they do not lose the right of appeal from the verdict on the facts. So that the jury-court thus far is rarely used, and remains an exceptional tribunal.[7]

[7] [In a concluding article the learned author will sum up his observations on the general trends.—Ed.]