June 1925

What Happens in a French Criminal Trial

D. C. Westenhaver

*Judge, Northern District of Ohio*

Follow this and additional works at: https://researchrepository.wvu.edu/wvlr

Part of the Comparative and Foreign Law Commons

**Recommended Citation**


Available at: https://researchrepository.wvu.edu/wvlr/vol31/iss4/2

This Article is brought to you for free and open access by the WVU College of Law at The Research Repository @ WVU. It has been accepted for inclusion in West Virginia Law Review by an authorized editor of The Research Repository @ WVU. For more information, please contact researchrepository@mail.wvu.edu.
WHAT HAPPENS IN A FRENCH CRIMINAL TRIAL*

D. C. WESTENHAVER**

When your secretary told me I had been assigned to prepare a paper on the above subject, I refused peremptorily to comply. I asserted most earnestly my want of qualifications. I protested that I should regard myself as an impostor if, with my smattering of misinformation, I were to pose as an authority in this field of comparative jurisprudence. But when he told me that this topic had been selected for me by your learned Program Committee, the members of which know me well, I was overcome by the subtle flattery. It entered into my system as a deadly poison and induced a reckless frame of mind, making me willing to attempt anything to justify such a delicate tribute to my prodigious learning.

Candor, however, compels a disclosure of the secret processes by which this paper has been produced. The recipe is given by Charles Dickens in his immortal Pickwick Papers. My intelligent audience will recall that when Mr. Pott, editor of the Eatanswill Gazette, advised Mr. Pickwick great fame had come to his journal from a series of articles on Chinese metaphysics, contributed by his learned critic, this dialogue ensued:

"An abstruse subject, I should conceive," said Mr. Pickwick.
"Very, sir," responded Pott, looking intensely sage. "He crammed for it, to use a technical but expressive term; he read up for the subject at my desire, in the Encyclopaedia Britannica."
"Indeed," said Mr. Pickwick, continuing, "I was not aware

* Address before Cleveland Bar Association.
** U. S. District Judge, Northern District of Ohio.
that that valuable work contained any information respecting Chinese metaphysics."

"He read, sir," rejoined Mr. Pott, laying his hand on Mr. Pickwick's own and looking around with a smile of intellectual superiority, "he read for Metaphysics under the letter M and for China under the letter C; and combined his information, sir."

The combined results produced by a practical application of this recipe to another abstruse subject, will now be submitted.

In French literature and news accounts of trials in French courts, references are often found to matters of procedure, which are, indeed, Chinese to most of us. Your Committee may therefore well be justified in hoping that even an uninformed explanation of the organization of French courts and the rules of procedure in French criminal trials will be helpful, if not interesting, in giving some background whereby these chance contacts with a foreign legal system may be interpreted. Consequently I shall try to summarize briefly the organization of French judicial tribunals, particularly for the administration of criminal justice, to describe sketchily the outstanding features of a French criminal trial, and to supplement the description by some brief observations upon the essential differences between the French system and the one under which criminal justice is administered in English speaking countries.

The basis of the French system for the administration of justice, civil and criminal, as well as the substantive body of its laws, is found in the Code Napoleon. In passing, it may not be amiss to dissipate the false notion that this famous Code was the work of Napoleon. The labor upon it was begun as early as 1791, and was continued intermittently through the Revolution and the Directory, until it was finally adopted under the Consulate in 1803. It was drafted and compiled by great French jurists, Portalis, Tronchet, and others. All that was contributed to it by Napoleon, as is well said by Guelard, was haste and expedition. The claim of authorship made in his behalf is only another instance of the Napoleonic pretense, whose fame in this, as in many other fields, is the result of ascribing to him credit for the work of others—a circumstance common in every nation ruled by a king or despot. The Code Napoleon has close similarity with the Roman or civil law, particularly in matters of procedure. It has spread, with modifications, throughout continental Europe, Spanish America, and Japan. More people find their rights of property and of person governed by its principles than by the principles of the Anglo-American or common law system.
The best place, perhaps, to begin is with the organization of the system of courts. Our old friend, the justice of the peace, stands at the bottom of the category, but has civil jurisdiction only. He has no power in criminal cases, not even the power to issue a warrant of arrest, or examine, or commit. He has some other duties peculiar to France, but for our purpose, he may be permitted to rest in peace.

Next in the ascending scale is the Court of First Instance. It is a trial court and is what is called the first degree of jurisdiction in civil matters and also in criminal charges not rising to the dignity of what are called crimes. It must be composed of not less than three judges, but usually all three and more sit in trials. Not less than one court is established in each arrondissement, but some have many more; for instance, the Seine tribunal has eleven chambers, and these are divided still further into sections and supplementary chambers. All civil cases, and all appeals from justices, are first tried in this court and without the intervention of a jury. All misdemeanor cases, called *delits*, as distinguished from what are called crimes, or offenses of greater magnitude, are likewise tried herein without the intervention of a jury. In this sense it is known as a *correctionel* court; but it must be borne in mind that the distinction between *delits* and crimes in France, differs widely from the line of diversion between misdemeanors and felonies in America. Some, if not the larger part of offenses described as felonies in our law, are dealt with in France as *correctionel* cases.

Next in the ascending scale is the Court of Appeals. It is the theory of the French system that every citizen, except in criminal cases in which trial to a jury is permitted, is entitled to two trials, one in the Court of First Instance, and another in a Court of Appeal. This second trial is called the second degree of jurisdiction. In France there are twenty-five Courts of Appeal. In Paris that court has ten chambers, and in addition, a correctional chamber, dealing exclusively with appeal trials in criminal cases. This court is composed of not less than five members, although more may sit, and, when sitting on solemn occasion, the judges wear red robes, whereas in the Court of First Instance the judges wear black robes. Perhaps many of my hearers have read or heard Eugene Brieux' great drama, *The Red Robe*, dealing with the tribulations and intrigues of a mediocre judge of a Court of Appeals in a remote province, with an ambitious wife and three marriageable daughters, all desiring promotion to a better paid
and more conspicuous tribunal. The significance of the title is found in this incident of judicial garb.

The highest and last court in the ascending scale is the Court of Cassation. The name comes from the word *casser*, to break or annul. As the name implies, it is a reviewing court and has power to break or annul, that is, reverse, judgments of Courts of Appeal and of the Court of Assize, the name given to tribunals in which cases are tried to a jury, and yet to be described. This court concerns itself only with points of law, and particularly with regularity and forms of procedure. In the event of a reversal, the cause is not re-heard by it and final judgment rendered, but is sent back to be tried over again by that tribunal, the judgment of which is thus reversed.

Two functions of this court call for comment. In declaring the law, it performs a function substantially the equivalent of that performed by the Supreme Court of Ohio or any other State. It is a boast of the French and other civil law jurists that their judges are not tied down by precedent, but that every cause is to be decided in accordance with the justice and the law as ascertained and declared in the instant case. In fact, however, there is the same tendency to uniformity and a substantially equivalent respect for the authority of opinions of the Court of Cassation as obtains in our practice. Its decisions are reported, cited, and followed with perhaps even stricter adherence to the doctrine of *stare decisis* than has prevailed recently in our own State court of last resort.

Another significant characteristic is the immense importance given to matters of form and procedure. More judgments of inferior tribunals are broken or annulled for errors in matter of form or procedure than perhaps for any other reason. French jurists are insistent upon the observance of correct procedure, because it is asserted by them that these forms are the best, if not the only, protection a citizen has against arbitrary action on the part of the judges; and perhaps it is true that in a judicial system where trial by jury does not exist and the trial court has power of life and death over the law as well as the facts, forms and regularity in procedure do assume an importance which is no longer essential in our system of jurisprudence.

Another power possessed by the Court of Cassation is peculiar to it and unknown to our system. My older hearers may recall the famous Dreyfus affair of the last decade of the last century, and if so, they will remember the battle waged around the question
of whether the condemnation of Dreyfus by a military court should be revised. France was divided into revisionists and anti-revisionists. Foreign opinion was chiefly on the side of the revisionists. Ministries were overthrown, elections were won or lost, on this issue. Dreyfus had been tried and sentenced in 1894. In 1899, on petition, the judgment, although passed by a military court, was considered by the Court of Cassation and was revised, i.e., broken and annulled, and a new trial awarded, to be held, however, before a reconstituted military court. Hence it appears that this court has power, after any lapse of time, to break or annul the judgment of any inferior tribunal in certain given cases, the sentences in which have been pronounced on the strength of lying testimony, and in so doing, it enters into an examination of the facts, holds an inquiry, and hears witnesses. In its revision of the Dreyfus judgment of condemnation, it found that the famous bordereau, on the strength of which he was convicted, was not his work, as had been testified and found by the military tribunal, but was the work of an officer named Esterhazy; that the testimony of Col. Henry, taken after the trial and included in the dossier, that Dreyfus had admitted his guilt after conviction, was false; and that correct procedure had not been observed, in that the military court had permitted the secret introduction during the trial, of certain documents proceeding from the Ministry of War, without communicating them to Dreyfus or his counsel.

The Court of Assize is the only court in which trial to a jury is authorized. The only criminal cases in which it is permitted are what are called crimes, i.e., grave offenses, such as murders, assassinations, robbery by violence, and major embezzlements. By special act it is given jurisdiction and a jury is authorized in cases in which a newspaper or journalist is charged with defaming or insulting a minister of the government, a representative of the people, or a public official. A jury trial is unknown in any other court or cases. Hence it is that in France a jury trial is usually a celebrated case, attracting much public notice within and without the country. Cases against newspapers or journalists have become almost unknown under the Third Republic, probably because of the unwillingness of juries to convict, and not because of the infrequency of the offense, for, in the gentle art of uttering defamation or proferring insult, French journalists stand at the head of the class.

Let us turn now to the procedure in a criminal case. Upon the report of an offense, whether classified as a délit or a crime, the
initial inquiry begins always in the same manner. No one may be arrested and detained more than twenty-four hours without being taken for an examination before a magistrate, called an instruction judge (juge d' instruction). An investigation is called an instruction. The magistrate begins it at once and continues with the inquiry until some one is found to accuse and send on for trial. Obviously, in most cases, as elsewhere, his duties are usually soon ended. But in grave crimes difficult of detection, the instruction may and often is prolonged over a series of years, and the dossier, as the file of the case is called, is built up item by item, and added to from time to time, even after conviction and sentence, and is never destroyed. Upon the report of an offense, the inquiry is begun without waiting for the arrest of an accused. While of lesser rank and dignity in the judicial system, the instruction judge is none the less a trained magistrate, learned in the law, with all the ideals and esprit de corps of an established magistracy. In all his examinations, whether before arrest is made or a charge is lodged, or after arrest and before an accusation is made, he is attended by a clerk whose duty it is to record literally every question and answer and read the same over to the accused or witness before it is signed.

The suspected or accused person has not the right to be silent or to refrain from testifying under the advice of counsel or otherwise or from fear that his answers may be incriminating or his statements may be used against him. At this and all subsequent stages, a French criminal inquiry proceeds according to what has been called the natural method, i.e., that which an employer having reason to suspect an employe of embezzlement, would proceed in trying to find out the facts. Inquiry is made in the first instance and as often as necessary of the accused person, the person who, if guilty or innocent, may reasonably be expected to know most about the subject matter of inquiry. It is the usual course to recall the accused or suspect before the magistrate as often as the interests of justice seem to require, confront him with any new item of evidence in conflict with his former statements, and require as well as afford him the opportunity of answering further, explaining if he can, denying if he must, that which tends to incriminate. All such examinations, not merely of the accused or suspect, but all witnesses, are recorded and become part of what is known as the dossier or file of the case. My hearers who have read Gaboriau's Le Dossier No. 113, one of the best detective stories
ever written, will find exemplified at length this procedure of an instruction by the examining magistrate.

His finding may be that the charge is sustained and the accused should be put on trial, or that it is not sustained. In either event, it is a judicial finding, presumptively made after full inquiry into all the facts, not merely as with us, those which tend to show guilt sufficient to warrant a presentment of an indictment by a Grand Jury, but such also as make in favor of innocence. A discharge does not, however, end the matter. If the public prosecutor, or as called, procureur, is not satisfied with this result, or if the victim of the criminal offense opposes the order of discharge, that section of the Court of Appeals, known as the Chamber of Indictments, is obliged to pronounce again on the matter.

The Chamber of Indictments (Mises en Accusation) is a chamber of the Court of Appeals consisting of five members. No one may be put in accusation for a crime as distinguished from a misdemeanor, until this chamber has examined the entire record sent on by the instruction judge and has first determined that a crime has been committed and that the accused is the guilty person. As between the lodging of a charge and the placing on trial of a French citizen, there stands, first, the instruction judge, and, second, the Chamber of Indictments, consisting of five judges, and the latter, if not both, must have reached the conviction that the accused person is guilty before he is subjected to the ordeal of a jury trial. In misdemeanor or correctionel cases, the accused may be placed on trial without an indictment, but never until the instruction judge has completed the inquiry and made his finding.

Criminal trials in which a jury is accorded, are held in a special court, known as the Court of Assizes. It likewise is composed of three judges. The jury is made up of twelve citizens. The jurors are selected with extraordinary care. They must be electors, thirty years of age, able to read and write, and known as respectable men. They cannot be deputies, i. e., members of Parliament, nor judges, nor teachers, nor citizens who have sat upon a jury during the preceding year. Persons over seventy years of age, nor men who cannot live without their daily labor, are excused from jury service. A panel of thirty-six is tendered, from which the procureur, representing the public ministry, and the defense, may each challenge those whose independence or impartiality they rightly or wrongly suspect, not exceeding, however, twelve by each. The oath taken by the jurors is impressive, not to say grandiloquent. They swear to "betray neither the
interests of the accused nor those of the society which accuses them, nor to communicate with any one until after their verdict is declared, to give ear neither to hatred nor malice, nor fear nor affection, to decide according to the charges and the means of defense, following their conscience and their intimate conviction, with the impartiality and firmness which become a free and upright man." Few judges and few jurors can rise to these sublime heights.

The court is opened with a simple announcement from the usher: "Gentlemen, the Court" ("Le Tribunal, Messieurs"). The three judges in black robes, with toques trimmed with silver, take their seats. The jury is impaneled and sworn, and then the trial begins with an opening statement by the procureur, dealing merely with the conclusions. Proceedings in correctionel cases, in which a jury is not permitted, are conducted in the same manner as cases before a jury. All witnesses except the accused, are excluded and not permitted to hear any part of the opening statement or the testimony of preceding witnesses. The trial begins with the questioning of the accused. The examination is conducted exclusively by the presiding judge, who has before him all the previous examinations of the accused and other witnesses and all items of evidence making up the file, and has presumably studied it with the diligence of counsel for the government or the defense. The first witness is always the accused. As before the instruction judge, he is expected to answer, is not exempt from self-incrimination, cannot plead that he is not obliged to testify against himself, and nothing except the discretion of the presiding judge limits the extent to which inquiry may be made into collateral matters. It is probably true, however, that notwithstanding testimony is not obliged to be confined to a specific issue, neither the accused nor witnesses are subjected to such a severe inquisition into collateral and irrelevant matters as in an English or American trial; certainly, no parallel can be found in French jury trials for the disgusting scandal now being dragged through an English court. The accused may and does explain, argue, theorize, suggest any and everything that occurs to him to make a favorable impression or to remove any unfavorable impression created by any fact or circumstance. No little complaint is made of the conduct of the presiding judge towards the accused, but it should be borne in mind that he has before him the accused's previous testimony and the finding of an instruction judge, and perhaps also the five judges
WHAT HAPPENS IN A FRENCH CRIMINAL TRIAL

making up the Chamber of Indictments; and hence usually knows the precise facts.

The accused's examination ended, the witnesses are called in chance sequence from the list supplied to the presiding judge. It is not the rule to marshal witnesses into separate groups, one made up of witnesses for the government and another of witnesses for the accused. The usual form of question put to each witness is, Say what you know! Obviously, many witnesses know nothing; others know, or think they know, a great deal. Obviously, a witness left to his own resources often cannot tell even what he knows. Some are garrulous, others partisan, some reluctant, others willing; but, having already been thoroughly examined, and irrelevant matters having been eliminated by a trained judge, the presiding judge can easily direct and control the examination until all that a witness knows is disclosed.

It will be observed that no cross examination is permitted except that of the presiding judge. Counsel for the accused may suggest matters for cross examination, but it is relatively feeble and futile as compared with a skillful cross examination in an American or English court. As witness after witness succeeds one another in chance sequence and tells what he knows, or as new or incriminating facts are disclosed, the accused may and usually is called upon by the presiding judge to reply to or explain that testimony. He has the right to do so and may suggest any explanation that occurs to him, interpose denial, or argue away the evidential weight of the new facts.

No imagination is required to perceive how interesting and spectacular a criminal trial thus conducted could become, particularly if the accused is a person of shrewdness and poise. In the famous trial in July, 1914, of Madame Caillaux, wife of Joseph Caillaux, Minister of Finance, for the murder of Gaston Calmette, editor of _Le Figaro_, she surpassed, in the skillful use of these opportunities, all theatrical possibilities, kept the crowd in an uproar, and stirred the populace of Paris to frenzy. Although the murder was admitted and no other excuse was offered than that it was done to protect her husband from publication of facts injurious to his political career, she was freed, and in the tumult of the great war which broke over Europe the failure of justice was forgotten on the morrow of her acquittal. Such incidents are not unusual in any important French criminal trial, and it need not be wondered that it is as difficult to convict a good looking woman before a French jury as it is before an American jury. In fact, despite
the practical absence of the hearsay rule and denial to the accused of a right to refuse to testify or incriminate himself, or the failure to confine the evidence to a specific issue, an accused person in a jury trial in France has quite as good a chance of escaping conviction as in America, and an infinitely better chance of so doing than in England.

The testimony ended, the procureur makes the argument first on behalf of the government. The closing argument is then made by the counsel for the accused. It is a boast of French jurists that the humanity of the French law requires that the last words to ring in the ears of the jurors shall be his plea of that of his counsel for justice and mercy. The judge does not sum up. The jury are required to answer by a majority only and by "Yes" or "No," without reasons, the questions submitted. The questions are those which the Court deems material: first, whether the defendant is guilty of the crime charged, and next, any number of questions going to matters of extenuation. It is upon these last that the severity of the sentence depends.

Once convicted, the court proceeds immediately to sentence. The judges deliberate in secret upon the sentence to be pronounced, but it must be delivered publicly. If the trial is to a jury in the Court of Assizes, no resort to the second degree of jurisdiction is permitted. In correctionel cases, appeals to the second degree jurisdiction must, in criminal as in civil cases, be lodged within twenty days after notification of judgment. A judgment upon a verdict of a jury can be broken or annulled only by the Court of Cassation in the manner already described, and then only for some vital error of law or failure to observe some settled matter of form or rule of procedure, or by petition for revision, upon a showing that an innocent person has been convicted by lying testimony. In correctionel cases on appeals to the second degree of jurisdiction, i. e., the Court of Appeals, the criminal chamber of that court retries the case in substantially the same manner as the Court of First Instance.

Certain distinctive differences between the French and Anglo-American system of administering criminal jurisprudence, furnish subject for comment.

First in importance is the inquiry of the instruction judge. It dispenses with the grand jury. The latter is unknown wherever the civil law or Code Napoleon is the law of the land. This instruction method is probably slow and cumbrous, but it seems well calculated in the long run to elicit the truth and find the guilty
It is certainly well calculated to protect an innocent person from the disaster of finding his name at the foot of a criminal indictment and being subjected to the horrors of a criminal trial. It has often seemed to me that public opinion, clamoring for law enforcement, fails to appreciate the enormous consequences entailed by the mere presentation of an indictment. The return of an indictment falls upon a household with a weight scarcely less heavy than the hand of death. And in this respect, our system easily permits of the presentation of a charge, and influential opinion is striving to make it still easier by eliminating the feeble safeguard of a grand jury inquiry. Our failures in the enforcement of the criminal law do not lie here. It is found in a popular psychology which is unwilling to enforce the penalty of the law against persons proved guilty, convicted, and sentenced; or which, after conviction, is willing to break down the universal obligation of a criminal law and turn the convict over to be dealt with at the personal discretion of a horde of probation, parole, and pardoning officials. It would seem better to make a more thorough preliminary inquiry and to lessen the misuse of personal discretion after a criminal is convicted and sentenced. We are careless and merciful at the wrong ends in the procedure.

By contrast, one of the worst abuses of our system is the police method which is substituted for the instruction judge method. A crime is committed. Public opinion demands that the criminal be detected forthwith and brought to justice without delay. The people, speaking through the daily press, barrass the police for their failure to find the guilty man. I am the last person willing to cast reflection upon the American police officer. I have for him the highest regard, and believe him as well qualified to weigh evidence and eliminate the true clews from the false rumors developed by inquiry as are lawyers or most of our police justices. On the other hand, he is only human, and, under the scourge of public outcry and newspaper criticism, unprotected by an instruction judge, who must take over the duty of examining the suspect and all accusing witnesses, he is tempted, if not driven, to resort to what is called the third degree. I am not asserting that police methods have degenerated into the oppression popularly ascribed to them; but no one can read the record of what was done by the police of the District of Columbia in Wan v. United States, decided October 13, 1924, by the United States Supreme Court, without realizing that the temptation is always present to do the same thing, and that, under the scourge of public elamor, it is
always possible that it will be done. The fundamental vice of the
crime method is its secrecy. Another vice scarcely less grievous
is the fact that no record is required to be kept. I should be
quite willing to trust this examination to the policeman if, like
the examining French instruction judge, he was required to have
always at his side a thoroughly trained clerk whose duty it was
to record every question asked and every answer given by a sus-
pect or an accused, and who could be trusted to perform that
duty well.

The conduct of the examination of the accused and witnesses
by the presiding judge has its advantages and disadvantages. But
the absence of cross examination, according to American or Eng-
lish methods is even a more important outstanding difference.
Cross examination, since the days of Jeremy Bentham, has received
the highest encomiums from English and American, and even
Japanese jurists. Mr. Wigmore says: "If we omit political con-
siderations of broader range, cross-examination, not trial by jury,
is the great and permanent contribution of the Anglo-American
system of law to improved methods of trial procedure." The Eng-
lish Common Law Practice Commissioners of 1853, a body in-
cluding Jervis, Cockburn, Martin, Bromwell, and Willes, declared:
"The circumstances which give to the system of English procedure
its peculiar and characteristic merits" are "viva voce interrogation,
cross examination, publicity, examination in the presence of the
tribunal." All the foregoing requirements, except cross examina-
tion, are present in the French system, and to this extent, the
claim of superior merit is minimized.

On the other hand, French and other jurists, trained under the
civil law, look with horror upon our system of cross-examination.
They describe it as a way of the Cross, strewn with snares and
pitfalls, and better calculated to confuse than enlighten.

The truth probably lies somewhere between these extremes.
Undoubtedly, cross examination is subject to great abuse. If the
trial court has not the power, or, if, having the power, does not
use it adequately, cross examination does tend to confuse rather
than to elicit the truth, and it may become an instrument of
torture and oppression. But, on the other hand, the fundamental
basis of an accused's right to be confronted by the witnesses is
his right to cross examine, so that all facts qualifying a witness' testi-
mony, as well as discrediting his veracity or disclosing his
bias or untruthfulness, will be adequately developed. And in
order to develop them fully, it is necessary that this duty should
be entrusted to one whose interest it is to do it thoroughly, and that person is only the accused or his counsel. All observers note that the duty of cross examining, when left to the presiding judge in France and elsewhere, is performed feebly and inadequately.

More objections have been urged against the accused’s right to remain silent than any other part of our system of jurisprudence. The objections urged are, I think, more weighty here than the objections urged against any other feature of our system. The French method, as I have said, is the natural method, the one which would be pursued normally by one setting on foot an inquiry. The accused is in possession of all the information bearing upon his guilt or innocence. No one knows so well as he whether he has had any connection with the offense, or whether the incriminating evidence is well founded or not. If, when suspected or accused, he can be called on to exhibit in detail his full connection with any transaction under investigation and give his explanation or denial of anything tending to incriminate him, the investigation could proceed more speedily to the desired end. Most of the matters requiring proof by the best evidence will be placed at once in the category of undisputed facts, and the inquiry would resolve itself to the narrow question, viz., the accused’s actual connection with or guilt of the charge made. If he may stand mute, if he cannot be called on to answer, if he is protected from answering under the guise that his answer would admit guilt or disclose facts which, taken in connection with other known or provable facts, would establish guilt, then the search for the truth is greatly hampered and is often wholly thwarted. And by what principle of right or wrong has any man the right to refuse to answer whether he is innocent or guilty? Yet no principle is more deeply embedded in our system. No one can be compelled to give evidence against himself. He may not be required to testify. No inference may be drawn from his failure or refusal to testify. This principal is as old as Magna Charta. It forms a part of the Bill of Rights which was exacted from the Stuarts. It has found a place in the Constitution of the United States and in the Constitutions of probably all States of the Union. It is now even contended that searching one’s automobile and seizing therein bootleg whiskey unlawfully transported, cannot be used in evidence lest by so doing, one is compelled to give testimony against himself. To a layman this is a reductio ad absurdum.

These comparisons might be extended, but the foregoing must suffice. Let no one assume that I am urging the substitution of
any of these distinctive features of the French system for our own. I am merely submitting these observations in the field of comparative jurisprudence, not with a view to urging their adoption, but merely to show that something can be said on both sides. In the domain of criminal jurisprudence we have long assumed a self-sufficient and complacent attitude of superiority over all other countries. It may, therefore, do us good to remember that property is as secure, life is as safe, liberty is perhaps as well preserved, in France and other countries whose people live under the rule of the civil law, as in our own. It may even be that they are better satisfied than we are with the results attained in the administration of the criminal law. This, however, may be said in our own favor: political liberty, the right of self-government, freedom of speech, absence from arbitrary arrest, search and seizure, and religious tolerance were achieved in English speaking countries some centuries earlier than in any other country now subject to the Napoleonic Code or the reign of the civil law. Our hearsay rule, absurd as it is in many instances, the right of cross examination, oppressive as it often becomes, confining the testimony to a specific issue, foolish as it many times seems, are all bound up with the system of jury trial; and while that system, as a means of administering justice, civil or criminal, may be inefficient as compared with trial to a bench of trained jurists, it still remains the most valuable political institution of a free and self-governing people. One would hesitate long before parting company with any of these old and tried friends.