the operating surgeon. Some statutes like that of Maine, are solely for the purpose of authorizing performance of the operation in cases where the family desire it and of protecting the surgeon who at their request relieves them from the burden of having to provide for the care of the incompetent children of incompetent relatives, also a principal preoccupation in Michigan and South Dakota.

This article is confined to asexualization for mental defects and does not deal with the operation on criminals. Many statutes, however, include authorization of the operation on persons convicted of specified crimes, usually sex crimes or perversion as part of the plan for improvement of the condition of the individual, and of society. It is expressly declared that the operation is not punitive but an exercise of the government's power for the benefit of the individual and of the public.17 This provision appears to have had little application in practice.

The constitutional provision usual in the states forbidding cruel and unusual punishment does not apply to asexualization under the statutes since they are not criminal acts.18 but the cases contain much argument to show that the processes used, vasectomy on men, salpingectomy on women, are not in the least dangerous or serious.19 If it were otherwise, the statute could be attacked as an unreasonable exercise of the legislative power,20 but the draftsmen of the laws usually carefully specify these two as the only legal operations. Michigan adds X-ray treatment, while Indiana permits in addition, "any other more suitable operation or treatment having sure sterilizing results." California, Alberta and Delaware do not limit the power of the board to choose the method of carrying out its order, but in California the two operations cited have been customary. As California and Alberta are consent acts, no trouble is apt to arise, but if, in Delaware, a less humane operation were ordered, it is probable that the court would enjoin it from being carried out.

The large number of acts of authorization which have been passed have not resulted in the performance of a great number of operations. 5820 persons have been operated upon in California with results which are reported to be satisfactory to society and to the individual and his relatives. Other states show but few operations.21 There is apparently little danger of the administrative authorities exercising their power abusively, and it would seem that the dire prognostications of the New Jersey court in the Smith case were figments of the judicial imagination. The legislature has shown no tendency to widen the scope of the asexualization statutes to include others than persons who after careful consideration are proved probably capable of transmitting a serious mental defect.

3. Laws of Virginia 1914, Chapter 294.
4. 85 N. J. L. 46 (1918).
6. Kansas Revised Statutes 70-149 to 155.
7. For example, Idaho, Oregon, Utah, California.
11. Smith v. The Board, supra Note 12.

FLOYD RUSSELL MECHEM

FLOYD RUSSELL MECHEM, of the Faculty of the Law School of the University of Chicago died on December 11, 1928. He had been ill for a few days with the prevailing influenza but his death was sudden and unexpected.

By his death the teaching branch of the legal profession has lost one of its outstanding figures. He was a great teacher. He had a keen interest in the discovery and precise formulation of the law: he had the desire that this understanding of the law should be given to those who worked under him: he had the capacity to stimulate the interest and hold the attention of his students, and to arouse both their respect and their admiration.

He was great not only as a teacher but as a legal scholar and writer. In a close intimacy of 25 years a steadily growing understanding of his mentality served only to increase one's admiration for his intellectual qualities.

One of the most marked of his characteristics was what may be called, for lack of a better name, the legal mind. He thought essentially as a trained lawyer thinks. This characteristic was noticeable in situations where the problem involved was in one of the fields of law which were not peculiarly his own. His stripping off of irrelevant considerations, his analysis of the essence of the problem thus presented, his comparison with other analogous problems of law, and the definiteness of his conclusions that the rule was so and so, or that the considerations were so evenly balanced that a hard and fast rule was impossible, were the expressions and manifestations of a mind naturally strong and vigorous and thoroughly imbued with the discipline of the common law. In those fields of law that he had made particularly his own, Sales Corporations and Agency the fact that first impressed one was the great extent of his learning. In all these fields, most markedly in the field of Agency, he seemed to have a close and immediately available knowledge of all the case law upon a given question. He knew not only the older cases but the modern ones, frequently by name, and always in such a way that if necessary the particular case could be found almost immediately. If the question was one on which there were no decisions, he knew the problem, had thought it out, knew the considerations and analogies that bore on it, and the implications from cases that might indirectly be of value in the solution of the question at hand.

The last great work upon which Mr.Mechem embarked was the Restatement of the Law of
the operating surgeon. Some statutes like that of Maine, are solely for the purpose of authorizing performance of the operation in cases where the family desire it and of protecting the surgeon who at their request relieves them from the burden of having to provide for the care of the incompetent children of incompetent relatives, also a principal preoccupation in Michigan and South Dakota.

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3. The division still applies in the later case of In Re Solomon, 238 Mich. 478 (1929).
6. 85 N. J. L. 46 (1918).
9. 70-140 to 155.
10. See, for example, Idaho, Oregon, Utah, California.

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The last great work upon which Mr. Mechem embarked was the Restatement of the Law of
Agency for the American Law Institute of which Mr. William Draper Lewis is the Director. An appreciation of Mr. Mechem in connection with his work in that field is given as follows by Mr. Lewis.

"The American Law Institute was organized in February, 1923, and immediately began to prepare for work on the Restatement of the Law. In June it announced that four Subjects would be undertaken for Restatement—Agency, Conflict of Laws, Contracts, and Torts.

"For each Subject a responsible head called Reporter was chosen. The future of the Institute and its great undertaking hung on the wisdom of the selections of these important positions. The choice for the position of Reporter in Agency was never for a moment in doubt. Floyd R. Mechem for more than thirty years had been recognized by the legal profession as the outstanding authority in that subject. The only doubt about his appointment was his own hesitancy, in view of his age, to accept so arduous a task. And what a task it is—this extraction of an orderly statement of our common law from a wilderness of cases!

"On this task he labored continuously from November, 1923, up to his last short illness. It will always be a matter of deep regret that he did not live to see the completion of the Restatement of Agency. He wished greatly to complete the work. He did do, however, at least two-thirds of the labor necessary for its completion and more than one-half of the Subject is now published in the form of tentative drafts. Furthermore, the Restatement of Agency will be finished by those who have worked with him from the beginning. The new Reporter for Agency, Warren A. Seavey, has been his chief adviser. Each member of the group working on the Subject knows how Mechem would answer every doubtful question. Though they may not always agree with what they know would have been his opinion, the potent force of his legal learning and his personality will continue to weigh heavily in favor of his legal ideas. Thus when in the course of the next three years a final official draft of a Restatement of the Law of Agency appears, the Institute and the legal profession will identify him, not merely with the first half of the work, but with the entire Restatement."

From the emphasis upon these aspects of Mr. Mechem's activities it should not be inferred that he was a mere legalist. He knew the law intimately as a body of rules and principles, but his interests were by no means confined to these subjects. He was a man of broad culture and of literary and general knowledge. He was intensely interested in the moral nature of the universe, in the problem of man's history and evolution, and even more in the problem of his development and possible future. His attitude toward these problems was colored by his very strong belief in certain ultimate truths. Probably he would not himself have used the phrase "eternal verities," but this phrase comes measurably near describing what Mechem's frame of mind was with regard to the means by which must be sought a solution of the problem of man in his relation to the universe. Not over two years ago, in a conversation that we had, he said this: "The old question in physics used to be whether Niagara Falls made any noise in falling before there was a human being there to hear it. The answer, of course, depends upon what one means by 'making a noise.' The atmospheric vibrations were there. Man's presence was not necessary for them. Man could not perceive them until he appeared but they were there long before he did appear. In the same way," he went on, "may it not be possible that truth and honor and courage and justice and other qualities that mankind inherently recognizes as righteous, are not invented by him? That they are eternal, quite aside from man, and that it is only as man progresses and grows spiritually that he is enabled to discover them. But they are not created by him. They are greater than he is, and something with which he must ultimately put himself in accord."

This belief in these fundamentals that underlay life had a definite effect upon his attitude toward law. He was greatly interested in questions of jurisprudence and in years of thoughtful consideration he had worked out a theory of the underlying nature of law. He did not view it as merely a scheme of rules springing from present social convenience and consequently subject in all particulars to whatever changes social convenience might at some other time demand. Such might be so with the incidental, the non-essential details of the law. But it fundamentally rested upon immutable principles and although social practices might depart from these principles at any given time and place, and although these departures might be for the moment the rules of conduct that the courts enforced, they were not in the true sense of the word, as he saw it, the law. Mr. Lewis writes as follows of the way in which Mechem's attitude in this regard affected his position in certain questions in Agency:

"His opposition to workmen's compensation law, and to several of the rules of agency which he acknowledged were too firmly imbedded in the decisions to be disregarded, was based on a belief that the individual was responsible for his faults, but not for the fault of others. Any exception to this principle was, from his point of view, not merely unfortunate, it was a denial of truth itself."

Another no less equally marked characteristic of Mr. Mechem was his humanness. Of a great personal dignity and self-control, he had nevertheless a sympathy and understanding of human nature and a geniality and approachableness that endeared him greatly to all who knew him. His sense of humor, quiet but very real, his willing recognition of the right of the other man to his own point of view, his varied interests, made him a delightful companion. During the course of his long career as a teacher of law, he came in contact with thousands of students. It is doubtful if any member of the teaching profession ever had a greater and more enduring hold upon the affections of those with whom he so came in contact than did Mr. Mechem. His death was followed by letters from practitioners all over the country, some of whom had had no personal contact with Mechem since their graduation, in some cases more than thirty years ago, but in all the letters there was the same note of the sense of personal loss. So it is with all who knew him. He was a man to whom is applicable in its true connotation the old phrase "a gentleman and a scholar."

Harry A. Bigelow.