

and duty to act as judges and have reduced them to mere moderators.

Other results of statutory shelter to the guilty, statutory privileges of crime and statutory tenderness to the weakness of the compromised, accompanied by the trial judges in a majority of the States being forced to act as moderators and abdicate their inherent functions as judges to advise the jury on the facts.

Between 1882 and 1903 lynchings aggregating 3,337 were reported in 44 of our 49 continental States and Territories. In other nations lynching now exists only in parts of rural Russia where the laws provide an inadequate punishment for horse stealing. Lynching does not now exist anywhere under the British, French, Dutch or German flags (Cutler, *Lynch Law*, 1, 3), although all these nations have frontier and mixed race conditions in their colonies, dependencies and possessions, which if either mixed races or frontier conditions were primary causes of lynching, would lead to an amount of it in excess of anything we have ever known.

It is quite true that Anglo-Saxon popular tribunals and lynching originated in the marches of Scotland in the days of the border wars and was practiced also by the *vehmgericht* in Germany in the days when the power formerly exercised by the Hohenstaufen Emperors had been usurped by the robber knights; also that it was used in expelling Tories and desperadoes and confiscating their lands during the lawless times of and following the American revolution.

To understand popular tribunals and lynching, the attitude of the vigilants and their responsible supporters and neighbors is of more weight than that of the outlaws or the formal legalistic critics of the vigilants who confine their activity to destructive criticism and make no attempt to remedy the underlying causes that have led to popular tribunals, popular justice in 44 of our 49 continental States and Territories.

Dean J. E. Cutler and Judge George C. Holt attempted to ascertain the views of the neighbors and upholders of vigilants by questionnaires, but no answers of value were received.

Hubert Howe Bancroft's *Popular Tribunals* justifies the two San Francisco vigilance committees (of 1851, also of 1856)