Indemnification for Innocent Men Convicted of Crime

The New York Times prints the following interesting article: Under the terms of a bill introduced in the United States senate and printed in Senate Document 974, any person convicted of any crime or offense against the United States who shall be able to establish his innocence of the crime with which he was charged —the burden of proof being upon him—and who has not been found guilty of any other offense against the United States, or who has received a pardon from the president on the ground of innocence, shall have the right to apply by petition for indemnification for the pecuniary injury sustained by him because of his erroneous conviction and imprisonment. This bill is limited naturally to conviction in the federal courts, and for offenses against the United States.

If it shall be passed by congress, however, it will set a pattern all the states might very well follow if justice is to be administered. Under the terms of the senate bill it is provided that the claimant must establish his innocence affirmatively, must show that the crime with which he was charged was not committed at all, or if committed was not committed by the accused. Having established his innocence, the question of indemnification and the amount to which the accused is entitled would be determined by the court of claims. Upon proof satisfactory to this court of the inability of the claimant to advance the cost of court and of process, the secretary of the treasury would be required to pay such costs on the order of the court. Another provision of the proposed law is that "in no case shall the relief granted exceed $5,000." This, it seems, is a wholly arbitrary sum and wholly unwarranted if it be the purpose of the law to see that fair recompense is made for the damage done to the claimant whose innocence has been established. It is explained that the reason for so limiting the relief granted is "to limit any exorbitant claims which may be brought." A further provision is made that the claims made under the law and properly certified by the court of claims, "shall be paid out of any general appropriation made by law for the payment and satisfaction of private claims on presentation to the secretary of the treasury" in due and proper form.

The proposed legislation is in the right direction; but it does not appear why the relief should be limited to $5,000 without regard to the merits of the case before the court, seeing that the government is amply protected by the requiremnt that the court of claims shall pass upon the claims presented. Take the case of Andrew Toth, for instance, the Hungarian steel worker, who was unjustly convicted and was imprisoned in a Pennsylvania penitentiary for 20 years. His earning capacity was doubtless not less than $2 a day, and a little calculation will show that, counting out the Sundays, he was working for the state 6,260 days, and that he would have earned during his long period of confinement not less than $12,520. It would appear that he should be paid by the state for its mistake in his conviction not a dollar less than he would have been able to earn had he not been deprived of his liberty for a crime he did not commit. Even such an award would not be a fair compensation for what he suffered from the state. It would not take into account the "mental anguish" of personal disgrace inflicted upon him by the state. Instead of limiting the "relief" to the sum of $5,000 the law should provide that the relief should be in exact proportion to the earning capacity of the petitioner during the time of his incarceration, and even that would be an inadequate return for the injustice done by the state.

There is nothing new in the theory that the state should be held liable for the injury it does to its citizens by erroneously depriving them of their liberty. Throughout the middle ages it was admitted that the private complainant was liable to the defendant in damages for a wrongful accusation or prosecution. The movement for the indemnification by the state of erroneously convicted persons was begun in France about the close of the eighteenth century. The first legislative expression of the obligation of the state to indemnify unjustly arrested and detained persons was contained in a decree of the Prussian parliament in 1766, which provided that not only should the person taken into custody because of suspected crime be released, his innocence having been established, but that he should have all the costs of his case restored to him and a just indemnity in money payable from the funds of the trial court. This provision probably did not long obtain, but of its justice there can be no question. Jeremy Bentham was the first champion of the doctrine of state indemnification in England for errors of criminal justice. A bill was introduced in parliament by Samuel Romilly in 1808, but was afterward withdrawn, and since then there has been no further effort to regulate the question, although parliament has admitted, in a sense, the liability of the state by granting lump-sum indemnities to various innocent individuals released after having suffered imprisonment upon erroneous conviction. These grants have been made as a matter of grace rather than as a matter of right. There is now a demand for definite legislation upon the subject in England. "The principle was first accepted in modern legislation in the cantons of Switzerland, where so many modern political reforms have received their first legislative expression." Within the last 25 years the countries of Europe have legislated upon the subject. In Sweden, Norway and Denmark, in Austria and Hungary, and in Germany various laws have been passed providing some measure of relief for the victims of the errors of criminal justice. It is held by Mr. Borchard, the new librarian of congress, in his most excellent study of the question that "society rather than the individual should bear the risk of accident in the administration of criminal justice.

The European statutes, which are various in their terms, but all of