"Reports" (English Manners) by Mrs. Barrows
1st all quiet out
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THE FAMILIES OF PRISONERS.

BY J. A. ROUX, PROFESSOR OF LAW IN DIJON, MEMBER OF THE PRISON SOCIETY, PARIS.

When the principle of personal responsibility entered into penal legislation and only the persons actually committing a crime or their accomplices were held guilty, though it freed many innocent persons from the imputation of guilt, yet too little attention was paid to the economic consequences of this method, since it meant imprisonment with all that that entailed to the families of prisoners. The lawmaker seemed to think that he had completed his task if he had freed the family of the convict from the disgrace of crime and if the children were held innocent of their father’s delinquency. But the legislator should go further. He should lessen if possible the amount of suffering and loss falling on the family. It is true that in some measure that was done, since there was no longer the confiscation of the property of the condemned individual, because by taking away all the resources of a family and leaving them in poverty they too might fall into crime. That was a hint of the humanity to be considered in these cases, but it was not enough.

Is there not a feeling at present that the short sentence to imprisonment is abused? In many cases where a fine might be paid the judge sentences to imprisonment. Now imprisonment throws a greater load on the family of a man convicted of crime than the payment of a fine, especially if it may be paid in installments or by having a part of the man’s earnings withheld till it is paid. Certainly it is incumbent on lawmakers to find some way to lessen as far as possible the suffering that falls on the family of the condemned.

Another thing that should be done is to see that when both husband and wife are convicted at the same time of different crimes that they should not be punished simultaneously, but that one should be left at the fireside to look after the children and to earn their support. It is dangerous for social security to wholly disorganize a family. It is neither humane nor farsighted
to deprive the children of both parents at the same time, to leave them without means of support, to go upon the streets to beg or perhaps do worse. The law should not count on charity to meet such a state of affairs.

The courts again might defer the execution of a sentence for a year or more. It is true that in France and elsewhere there is often a space of time before the execution of a sentence, but that is not the rule and it may always be forbidden. If it were made legal to have imprisonment deferred it would give time for the father or mother of a family to make provision for the little children during their imprisonment and to arrange their affairs for absence. The unmerited sufferings that so often fall on innocent heads might be prevented by such a plan.

Then at the expiration of the sentence there comes the aid from the societies having that in charge. How much that will be depends on circumstances, but it would seem better if instead of devoting themselves to the prisoner alone such societies would look after his family while he is in detention. Instead of helping him when he leaves prison it would be better to try to lessen the often frightful misery of his children during his incarceration. Better than repeated visits to prisoners and than sermons to which they turn an inattentive ear, would it be to help the wife left penniless and the children lacking bread. Such action would soften the prisoner's hard heart if there were any affection left in it. Many instances have been known of reform being effected through such solicitude for the family.

The question is asked whether there should be special institutions for the children of prisoners. They do exist in certain countries, especially in Italy, where the sons of assassins and other long-term criminals are brought up. Without wishing to discourage philanthropy or denying that such institutions may relieve families in distress, yet one must be reserved in recommending them. On the one hand they would not form such a tie between the prisoner and the aid given to his family as may be formed when the societies for aiding prisoners aid also the children at home, which acts as a lever in helping the prisoner to reform. On the other hand, is it well for the children of criminals to be brought together in this way? Is there not danger that such comradeship might result unhappily? But granting that the work of education and moral training in such institutions were a success is it fair to the child to have to remember all his life that his education was carried on in a home for the children of criminals? Could he ever disembarrass himself of that dishonor? Finally, when there are so many other unfortunate people to help is it quite fair to choose the children of crime? Would not the honest workman, who manages to keep honest in spite of temptation, find fault and say that in order to be helped he must commit crime? Charity loses its beneficent character when it leads to such murmurs. To sum up then the following theses are proposed:

To lighten as much as possible the economic distress resulting from the imprisonment of the head of the family certain things should be done:

1. First of all to shun the abuse of imprisonment.
2. Prohibit the imprisonment at the same time of husband and wife, sentenced at the same time for different offenses.
3. Give to the courts, when there are little children, the power to defer imprisonment for a year.
4. Invite societies that look after discharged prisoners to care for the families of convicts while they are in prison.
5. In countries where labor is thoroughly organized, advise with extreme caution institutions for the schooling of the sons of convicts.
PRISONERS' FAMILIES.

BY ERNEST BERTRAND, PRISON DIRECTOR, NAMUR, BELGIUM.

The practical difficulty in doing anything for the families of prisoners is hard to surmount. Doubtless some palliative measures might be adopted, such as conditional liberation, or allowing the prisoner to follow a productive industry in prison, to aid his family—an expedient full of obstacles. Heaven keep me from discussing here the hackneyed subject of what is to be done with the product of the work of prisoners. They dispute about the poor little earnings as though it concerned a fortune. The cost of the trial, damages, attorney’s fees, restitution to the victim—a crowd of demands, each louder than the other, pounce upon this slender quarry, while the family of the convict, to whom first of all he owes support, are forgotten and perhaps die of hunger. As a third thief the prison administration appears, collecting at first hand the last farthing of the culprit, taking to itself the lion’s share. Does it do wrong? One dares not say so.

In Belgium the product of the daily handiwork of long term prisons does not exceed fifty centimes and the average cost of each convict, aside from the cost of buildings and superintendence, amounts to the same sum. Taken together the product of the prisons is not over 25 centimes a day, so that if the administration were generous enough to allow the convicts to dispose of a part of their gains it would be necessary that this amount should be tripled. In other European countries the earnings can be reckoned in centimes. Since moral reform was introduced into prisons work has lost its lucrative character almost as much as its penal. The separate system—why not admit it?—will never be a business success.

So, without overlooking the economic improvements of which prison labor is susceptible, it may be said that the state would have to compete with free labor, and brave its protests, if it would make it possible for that labor to support, or even to aid in the support of the prisoners' families.
Shall we dare to say as much about America? Not absolutely. But fine as are the balance-sheets of some American prisons all that they venture to say is that the value of prison labor is not the same in all latitudes. Besides how could a circumscribed industry, hindered by the material difficulties and obstacles of prison environment, compete with free and normal activity outside?

But in the most favorable supposition, admitting that the convict could help in the support of his family during his detention in prison, there would always be the expense incurred between the time of arrest and the first earnings he could give to them, which might be a critical time for a family suddenly left without support from its head. The need of outside help is evident. Where is it to be had if not from a third party? It remains to be decided whether it shall be from the state, public charity, or private relief.

It would not be looked on favorably to see the state taking charge of the families of men who have fallen into crime. That would be to encourage crime, and to do away with one of the barriers that nature has set up in the human heart against it; it would also make other unfortunate families envy the families of criminals. But the wives, the children, the incapable, those who suffer from the crimes of the fathers, who are contaminated by the moral leprosy of the head of the family—does it not add to the cruelty of their fate to leave them to material suffering? We recognize that it takes persons specially adapted to deal with such cases, but such persons are found who carry with them bread for the soul as well as the body. The guardian societies are imbued with the same spirit and they are bringing about a revolution in our country. It is the families, especially the children, of convicts who are attracting their attention and their beneficent aid. Neighboring nations have shown us examples of the same thing.

These societies in Belgium draw their resources in part from private individuals and in part from the treasury of the state. The state which could not ostensibly support the families of delinquents can lend a hand to those who do. It is only an act of protection to the weak. Certain German societies have changed their object of aiding prisoners, to “aiding the families of prisoners.” It would be our desire to more and more see this aid directed to the children of convicts that their future may be looked after.

Directors and prison officers, let us help these enterprises for the public good. We who talk every day to prisoners, who read their correspondence, who receive the petitions and the entreaties of their families, we are in a better position than any one else to learn the real situation and to recognize which are the cases that merit true interest, to report urgent cases and to co-operate with suitable measures. Let us remember that our most distinguished predecessors were not those who considered their work bounded by walls and regulations. If we accept this co-operation it will be a powerful lever for discipline; it will give us moral strength. How could the convict rebel against severity even, if he saw that it led to charity? Let us then make haste to accept the part of intermediary between the inexorable social needs and their unjust consequences.

Thus living in part by its own industry, in part by public or private aid, under the oversight of the guardianship committee, the family of the convict may succeed in weathering, without too much risk and suffering, the storm it must experience in doubling Cape Forlorn.
THE DEATH PENALTY IN FRANCE.

BY R. DEMOGUE, PROFESSOR OF LAW IN THE UNIVERSITY OF LILLE; MEMBER OF THE PRISON SOCIETY OF FRANCE.

The death penalty has always existed in French legislation. It is true that a decree of November 5, 1796, declared that dating from the establishment of general peace the death penalty should be abolished, but it had no practical effect. On the 28th of December, 1802, it was enacted that that penalty should continue to be imposed in cases determined by law.

Though the death penalty still exists, its abolition has many a time been demanded by the deputies in parliament: in 1838, 1850, 1868, 1870, 1872, 1876, 1881, 1882, 1886, 1894, 1898. But even more significant, on the 5th of November, 1906, the lord keeper of the great seal presented to the Chamber of Deputies a bill for the abolition of the death penalty and the substitution of perpetual imprisonment, six years of which should be in cellular confinement. It was at first approved by the commission of legal reform. But public opinion in general was unfavorable to the reform. During the years 1907 and 1908 votes in favor of the death penalty were sent to the government by 127 juries. Meantime capital punishments multiplied: 41 in 1907 instead of 14 in 1905. A large daily paper having opened a referendum, 1,083,000 persons favored the death penalty, while 328,000 were opposed to it. Only one conseil général and 42 sections of the League for Human Rights ranged themselves with the latter. In the face of this state of public opinion the commission, July 2, 1908, reported in favor of retaining capital punishment, and on the 7th of the following December the Chamber voted it by a large majority. The death penalty has been in continual operation since that time by law. As a matter of fact during those two years those condemned to death were successively pardoned. The penalty then is ineffectual and that fact has seemed to stir up public opinion.

If the principle of capital punishment has never disappeared from the law, the decision as to the cases where it should
be applied has undergone many changes. Under the old régime the judges had arbitrary power, and usage alone determined which cases should receive the death penalty. The penal code of 1791 made 32 crimes punishable with death. The code of 1795 suppressed two of them. The penal code of 1810 applied it for 37. The law of 1824 authorized magistrates to admit extenuating circumstances for infanticide committed by mothers. Though the sentence of death was pronounced it was often changed to hard labor for life.

Since 1825, when our criminal statistics began, the law has been repeatedly modified. The law of 1832 modified twelve articles; also in certain cases replaced the death sentence with imprisonment for life at hard labor, deportation or imprisonment from five to twenty years.

A still more important reform in 1883 was allowing the jury to consider extenuating circumstances. This allowed the jury, when it desired, to avoid the application of the death sentence which formerly would have followed the verdict of guilty.

The constitution of 1848 abolished the death penalty for political reasons. The law of 1901 suppressed the death penalty for mothers guilty of infanticide, replacing it with life imprisonment at hard labor, or for a definite term, according as there was premeditation or not.

At the present time the penalty of death is provided for the following crimes, attempted or committed, or for complicity in them: striking or wounding a magistrate, a ministerial officer, an agent of the public force, a citizen charged with public service, in the exercise of that service, with intent to kill; assassination, patricide, poisoning, infanticide by any except the mother; any crime accompanied by torture; murder without premeditation accompanied, preceded or followed by another crime; castration with death within forty days; sequestration accompanied by bodily torture; false witness resulting in condemnation to death; intentional burning of any residence or vehicles containing persons; destruction of the same by explosives; the commission of another crime calling for this sentence by a life prisoner, etc. For soldiers and sailors death is prescribed for 22 causes in the army and 29 in the navy.

As statistics have been kept only since 1825 only vague reports can be given of the period before that. According to recent investigations in one province, whose population is estimated to be 800,000 between the years 1750 and 1765, an average of seven or eight a year were accused of homicide, or 117 in all, with 49 executions. (Seven tables of statistics follow. These tables are for France alone, not including the colonies nor the crimes coming before military tribunals.)

Crimes are more frequent, especially crimes of blood, at the time of changes in the government, as in France in 1830, 1848-51 and 1870. Every regime begins with frequent use of the death penalty and little by little the sentences are fewer.

It is remarkable how many crimes are committed which are not followed by prosecutions. It is also found that in spite of chemistry there are fewer cases of poisoning than formerly. Today there are hardly a dozen a year; half a century ago there were twenty or thirty. Crimes usually diminish with bad harvests of wine, though sometimes they are more frequent in good years. Condemnation to capital punishment, very frequent before 1832, have greatly diminished since then by the acceptance of extenuating circumstances. They increased from 1840 to 1864, owing to a new jury law. Very rare between 1860 and 1870, they increased to about thirty a year between the years 1871 and 1894. After that they were rare till, as a protest against the proposed abolition of the death sentence, they increased in 1906. The executions kept about the same step, save about 1880, when there were many pardons, and again in 1906-7. The large number of pardons from 1878 to 1883 brought about a reaction, and after 1880 condemnations were more frequent.

The jury is influenced not only by the number of those accused, but by the crimes known through the journals. If there is much crime followed by few prosecutions the jury is severe. Too many pardons lead to a reaction of severity.

From 1873 to 1880, 51 per cent. of those accused of capital offenses were declared guilty; 92 per cent. with extenuating circumstances. From 1881 to 1905, there were 34 per cent. found guilty, 87 per cent. with extenuating circumstances.
No person has committed suicide to escape a death sentence within forty years.

In France executions have always been public. They take place in one of the public squares. This often gives rise to scandalous scenes. The crowd is held in order by a large armed force. The morning hour is generally chosen. Bills have often been introduced to suppress this publicity; the last attempt to do away with it was in January, 1908. The mode is decapitation by the guillotine. Soldiers and those belonging to the navy are shot. Execution can not take place on festival days nor Sundays. If a pregnant woman is condemned to death she is not executed till after the birth of the child, but it is a long time since any woman has been executed in France. The bodies are given up to the families if they claim them. A procès-verbal of the execution is drawn up by the clerk, but the civil records do not tell the kind of death, in order not to injure the family.

**Conclusion.** It is certain if one looks at the law and the practice, that the present tendency is to restrict the death penalty to cases of wilful homicide and even to certain of such cases: aggravated murder, assassination, etc. It would be very hard to get a jury to pass a sentence of death for striking a magistrate or burning an inhabited house, etc. There is a tendency to suppress capital punishment for women. From 1833 to 1880 there were 45 women executed, two only since then.

It is not less certain that public opinion has been hostile to the attempt to do away with capital punishment. There are two reasons for this. First, the time was badly chosen, these later years having shown an increase in crimes of violence. This increase was manifested under a form which has disappeared, crimes committed by bands. In the second place the attempt to do away with it was not made with tact. It was thought that it would be sufficient to pardon those condemned to death, and commute their punishment into hard labor for life and sanction the abolition by law. But public opinion, wrong in part, it seems, has always held that hard labor, as it exists in the colonies, is not very intimidating. Criminals have little fear of it, and indeed at one time they committed crimes in the prisons to be sent to hard labor in the colonies rather than stay in the prisons in France, but the law of 1880 compelled such prisoners to stay in France.

To secure a chance to obtain the abolition of the penalty of death it would be necessary first to fix at once on perpetual imprisonment, with six months cellular confinement, in place of the death sentences. When public opinion, and criminals in particular, are convinced of the severity of this penalty then the abolition of capital punishment would be comparatively easy. But the bill presented in 1906 did not take this way, and the public saw in it only the abolition of the death sentence and the substitution of hard labor for it. In 1907 the violation of a child, followed by murder, brought about a change of opinion about the abolition of the death penalty in some who had favored that abolition. It is not absolutely certain that with time and more adroit tactics the death penalty may not be made to disappear without arousing an adverse public opinion.
COMPPLICITY IN CRIME.

BY J. SAINT-AUBIN, DOCTOR OF LAW; PRESIDENT OF THE COURT OF APPEALS, PARIS.

Among the natural tendencies, we might almost say, the necessities, of man is that of association; the effort to attain by union things which no one could accomplish alone. It may be association against the oppression of one person, or against the violence of many; sometimes for the defence of common interests. In our own days we see associations of all kinds to protect material and economic interests. This right of association, which has great advantages, has also grave dangers. Legitimate in itself, it may become a source of peril to a state by organizations against public order. That is why government has had to intervene, not to suppress the right of association (one does not suppress a natural right), but to regulate it and to mete out penalties when the association is criminal.

The nations themselves have had to submit to this natural law. We cite as an instance the agreements between governments for the extradition of criminals, which unite nations against crime in the ends of furthering justice. Among nations, as among individuals, there is this natural tendency to association, usually for defence or for protection.

This power of association, which has proved such a powerful lever among modern peoples, could not escape the watchful attention of criminals. If a crime requires for its accomplishment the union of a certain number of persons, it would seem the duty of the lawmaker to provide a penalty for such a union, so that those who associate themselves for the purposes of crime should suffer the same penalties as those really guilty of breaking the law. In fact laws relating to this have from time to time been passed, and it is certain that organized bands of criminals are less heard of at present than formerly. But to know exactly the situation of a country in this respect and whether crime is increasing or decreasing, one must know the number of crimes really committed whose authors escape arrest. Looked
at in this way it is evident that bands of criminals still exist in France as well as in other countries. In the United States the Black Hand is an organization which is not only national, but is related to an analogous organization in Sicily. In Italy we have the "Banana," the "Camorra" and the "Mafia," which in spite of incessant efforts against them dissolve only to re-unite, a greater menace than ever. In England and Spain and all European countries there are similar criminal bands, and in the interest of public safety they should be put an end to at all hazards.

If we pass now to the large cities we find that there are organizations of criminals for night attacks, robbery, assassination and especially for swindling.

The truth is that with civilization there has been an evolution of crime. If it has not created the criminal it at least has not had the power to destroy him and he has known how to profit by civilization and to change the outer appearance of his crime. When railroads were invented the robber could no longer stop the diligence, but he carried on his murder and robbery on the train.

At a certain epoch associations of malefactors had a political character and a penalty was pronounced against association. With that intent the French Code of 1810 was modified by the law of 1893 so that unions which formerly escaped all repression could be legally prosecuted. One can now charge with crime those criminal associations which have no chief and no set rules, but which plan to commit crime. That is a step toward the extension of the theory which considers the association of malefactors as criminal in itself, and as an act which the law can repress. It is a penalty of a preventive character, since its object is to prevent the tendency of criminals to associate with each other.

Such is the condition of French legislation. Ought we to extend the principle admitted by the penal code and apply it to any association which has for its end the commission of misdemeanors as well as of felonies? To answer this question we must consider the change that has come with civilization. Fraud has been substituted for violence. With the institution of financial and other associations fraud and cunning have taken the place of brute force, and we find in place of highwaymen more aristocratic and civilized types who are moral murderers, and who steal millions without moving a piece of furniture. Methods have changed. Even criminals feel the softening of manners that comes with civilization. Violent means are repugnant to them. The clever usages of England and America have brought about this evolution. The thief who robs on the street corner is a back number in the world of crime. Their ways are civilized and the new type of crime may be called commercial. It discusses the outcome with its victims. What has been the result? That attempts against life are rarer, but that the gains of the criminals are greater. They take no risks. They steal no more openly, but after the American fashion (à l'Américaine), which secures the greatest advantages and permits the greatest hope of impunity. The two types of crime which mark our day are swindling (escroquerie) and the extortion of hushmoney (chantage) (blackmail). Swindling is now carried on in such a careful way by its authors that it is like a scientific problem how to compass their ends and at the same time escape the clutches of the law.

"Chantage" is a crime that has developed with the power of the press. It is the exploitation of the individual by the individual who profits by the vices, faults, weaknesses of humanity, making of these a source of revenue. By the aid of the papers, by pernicious publicity and deadly insinuations, the master blackmailer pitilessly exacts his booty from victims who certainly never will lodge a complaint against them. These crimes demand patient and often difficult preparation, and for their success the assistance of several persons is necessary. If civilization extends the field of crime, it also lessens the number that can be committed alone. Should we then apply penalties to those who form associations for these projects?

We reply negatively, except in extraordinary cases. When social peril is such that it is necessary to prevent it by any means then exceptions to the common law may be made. The
safety of society does not require such measures by associations formed of ordinary delinquents. Let the government, if forewarned of the existence of an international association of criminals, warn other governments, but that the judicial authorities should be called on to attach a penalty for anything which is not an accomplished crime we can not admit.

The true way to combat the tendency of criminals to league together is to make complicity an aggravating circumstance. The French code makes three divisions of complicity; antecedent, concomitant and subsequent. Complicity has for its object facilitating the commission of the deed. It is a danger in itself against which society has the right to defend itself. It is not enough to divide the guilt among the participants, as is done at present by the French code. The penalty should be increased if the crime is the work of several.

Complicity is most frequently to be found among habitual criminals. Recividists often bind themselves together in the prisons where they are confined and make their plans for future operations. The tendency to associate themselves is therefore to be found among the most dangerous criminals and for that reason the law-maker should make complicity an aggravating circumstance.

Crimes of complicity are increasing, especially those that rest on cupidity and swindling. Crimes of passion are usually the work of a single person. The increased social danger from crimes of complicity affords another reason for increasing the penalty in those cases.

From these various reasons we can only propose the adoption of a system which will reach the desired result without running the risk of the reproach that might fall on one who should advocate punishing the mere act of association without a criminal attempt. Accomplices may not be punished for a criminal act which they have not accomplished, but they must render an account of their copartnership, and it becomes an aggravating circumstance and permits the increase of the penalty which attaches to the crime if committed. This would seem to be sufficient to put criminals on their guard against associating themselves for crime.

The French penal code punishes those who have shared in a felony or misdemeanor for that felony or misdemeanor. In five cases it may exceptionally increase the punishment by reason of the number of the guilty: in case of rebellion, when the crime is committed by more than 20 persons; in case of mendicity; in case of violation of public morals; in case of pillage; in case of theft. It is this idea which we propose to make more general. We therefore express the following opinion:

I. It does not seem to be in conformity with the spirit of penal law to make of any preliminary agreement to break the law a special crime.

II. Since it is seen that there is an increase of crimes in which there is complicity; and since the latter are the deeds of habitual criminals who are most dangerous to society, there is reason to consider complicity in crime an aggravating circumstance and to apply to those who have shared in it a special penalty, beyond that which they would have incurred had they committed the crime alone.
CRIMINAL SENTENCES IN FOREIGN COUNTRIES.

BY A. LE POITTEVIN, PROFESSOR OF LAW, UNIVERSITY OF PARIS.

1. Crime knows no frontier, but the frontiers limit the domain of penal law and repressive sentences. A nation does not carry out the sentences of an alien country. A sentence passed by a tribunal is executed only in the country where it is passed. But in this discussion we are not to consider the executions of sentences, nor extradition, nor the competency of one or more states in dealing with the same criminal act. We are supposing that the person convicted of crime by any given state has suffered the penalty before venturing into other lands. The country in which he now finds himself has no judicial motive to prosecute him anew for the crime which caused the sentence elsewhere.

2. But even after the expiration of the sentence the judgment lasts, and brings, or may bring, certain consequences in its train.

In the first place the convict is affected in his rights because of the moral unfitness that his crime has betrayed. In the next place he is threatened with more severe punishment should he again break the law.

3. These consequences may occur only in the country that condemned, and not elsewhere. No sovereignty recognizes any penal sentences which have not been pronounced in its name; at least it does not attach to them any positive effect. Consequently, officially, an alien judgment does not count. In going to another country the convict arrives *integri status*, with all the rights of an honest man. Legally he will be a first offender if some day (which unfortunately is not improbable) he falls again into crime.

If these old principles are outgrown we shall see that an effort has been made to improve upon them. Several remedies have been proposed to meet this situation which neither satisfies the idea of justice nor gives social security.
4. If the convict is an alien in the country which he wishes to enter he may run the risk of not being admitted or of being expelled as an "undesirable immigrant." Several legislatures have shown a tendency to preserve themselves from a dangerous immigration and have affirmed the right to keep out persons who have been convicted of felony or any other crime implying moral turpitude. (Art. 2, law of Feb. 20, 1907, U.S., and the English law, Aug. 11, 1905, article 1.)

5. Our problem then must confine itself to the native-born, since we cannot turn them back, whatever their past has been. Besides, they are the ones who will exercise the most rights unless their previous conviction elsewhere shall make that impossible, seeing that all legislatures even now limit more or less the legal rights of foreigners because of their quality as aliens.

In considering the condition of the native-born, then, we will make three divisions:

I. Disqualification.
II. Recidivism.
III. International exchange of sentences pronounced for penal offenses.

1. It is evidently a grave imprudence to allow an ex-convict, on his return to his own country, to have a complete exercise of his rights, but at the same time it seems difficult to give effect to an alien sentence in that which concerns forfeitures and disqualifications which might be the result of his crime. This is the more difficult because one cannot know the circumstances of the crime, and a priori cannot always have absolute faith in the decision of a court differently organized.

There is another consideration: penal disqualifications vary according to different codes.

7. All this is expressed in a special action which has often been called "l'action en déchéance," by which the court may pronounce against the native-born, who has been convicted of crime abroad, the same disqualifications that he would have incurred had he been convicted in his own country. This action has been approved by the International Prison Congress. The vote passed by the Congress of Paris, and which it is to be hoped will be passed by the Washington Congress, is as follows:

"First section, third question. Response: It is desirable that the native-born convicted of crime or offense against the common law abroad should incur in his own country the same forfeitures, disqualifications and deprivations that he would have incurred had he been convicted there. In the present state of international law the Congress does not demand that these forfeitures, disqualifications and deprivations shall be the direct result of the alien sentence, but that they shall be pronounced as the consequence of special action in the courts of his own country."

There are precedents for this, viz., Art. 24, Prussian Code, 1851; Art. 7, Italian Penal Code; French laws, Nov. 30, 1892, Art. 25, and March 21, 1905, Art. 4, 5; Art. 32 of Norwegian Penal Code; Art. 12, Russian Code; Bill of Swiss Penal Code, 1908, Art. 8.

8. There are variations in the texts of these codes. It is more just to the condemned and more in conformity with the reciprocal independence of the jurisdictions of different countries if this action should include the verification of the foreign procedure, estimation of the offense, legal designation of the crime, and that it should discuss the guilt of the offender if he can present good grounds for such discussion. The action ought to leave the judges free to pronounce or not to pronounce the penal disqualifications or to pronounce those less severe than the foreign sentence might have imposed. In a word, the judicial decision of the action en déchéance ought to be optional (facultatif).

The essential thing is that all legislatures should adopt this special action. It is relatively a secondary matter that they should have a variety of expression. It is even desirable that they should modify their decisions according to the countries where the sentence was given.

9. The principle being admitted the action en déchéance is susceptible of extension. First, when private individuals bring a suit against a person they may invoke a previous sentence if
the person has been already convicted of crime in his own country. It would be logical that they might also invoke a sentence against the person by another country.

10. Second, the convicted person, in addition to forfeiting certain rights, may also be the subject of measures meant to reform him, to prevent his relapse into crime: surveillance of the police, prohibition of certain places of residence, etc. One does not see why he should escape these severities if they are needed for the general good of the public simply because it chanced to be discovered abroad that he was a dangerous character.

11. Third, the preceding is on the supposition that the native-born returns to his own country. There is no reason why the same theories should not be applied to the foreigner in such cases as would be advantageous.

12. Here attention must be called to the case of a person, a stranger here in France, for example, who had been previously convicted in his own country. This has been discussed by the International Prison Congress, and the Paris Congress voted: "Section I, Question 3: It is desirable that the disqualifications incurred by a person by reason of judgments pronounced against him for crime or offenses against the common law by the tribunals of his own country should follow him by law into all countries."

II. 14. In considering recidivism it must be remembered that although a former crime is the basis for it, yet there are distinctions and exceptions made as to the conditions of recidivism. A first offender may have the benefit of conditional liberation, "la loi Berenger," as we like to say in France—and out of France. The recidivist cannot have it. What if the first offense has been in another country? What if the previous judgment has been pronounced by a foreign tribunal?

15. There is one reply to make. If the foreign sentence has been followed by an action en déchéance in the country where the convict has committed another crime the judgment of déchéance has, so to speak, naturalized the first sentence; the effect is that another crime is recognized as recidivism.

16. Let us look at the different codes. The Italian code declares that in the recognition of recidivism, sentences pronounced by alien courts are not to be counted. The French laws by their silence on the point put no legal obstacle to obtaining conditional liberation on account of foreign sentences. Recidivism is considered a national, not an international, thing.

17. But there are other laws. According to the Norwegian law, Art. 61, "The court can recognize as a reason for increase of penalty those penalties inflicted by a foreign court as well as those pronounced at home."

The idea of an international recidivism would seem to have penetrated into Swiss penal law in a very positive way. The penal law of the canton of Geneva (Feb. 10, 1904) permits the judge to suspend sentence when the incriminated has not previously been sentenced in Switzerland or abroad. The code of Neuchâtel permits it where the accused has not been previously convicted in any other canton or in any country with which Switzerland has a treaty of extradition. Recidivism is internationalized. It might be expressed thus: The courts may declare a person to be a recidivist who has been convicted previously by a foreign court.

It is not, however, incumbent on these congresses, whose purpose is to formulate universal principles, to embarrass itself with the details of these questions, which without the least trouble may be settled by each country for itself. But we maintain that this legal declaration of an international recidivism should be optional, as we have done for the action en déchéance.

Progress is slow but sure. The sentiment of universal human justice is a very elevated conception, but practice cannot soar so high. The universe is divided up into nations with different civilizations, and even though there might be similarity of ideas, yet with legal customs and perhaps prejudices they cannot act alike. A remnant of distrust in regard to foreign convictions survives in spite of the need of collective organization to combat international crime. It is wiser therefore to begin with modest reforms without trying to reach the ideal with a
single bound. We may, however, reach the desired reform by gradual steps. The first step might be to have all accept the idea that the declaration of recidivism should be optional. That would be the first and important stage. The judges in each country would then grow accustomed to welcome more frequently the normal results of foreign sentences. We might wish that this should become imperative, but step by step we may reach that ideal in the course of years.

III. Whatever may be the effects that one wishes to attach in the future to sentences passed in foreign countries it is first of all needful that they be known. There exist conventions by virtue of which two countries may transmit to each other bulletins of the sentences passed on the natives of either on the territory of the other. France, for example, thus receives reports of the sentences passed on Frenchmen by the courts of the countries with which it has concluded such a treaty. Our laws recognize this exchange, so that our courts are not ignorant of what is passing beyond our borders. But this ought to be general. Whatever our theories there can be no practical results till there is general acceptance of the formulas of international law concerning convictions. It is shocking to think that delinquents are unequally treated according as countries exchange or do not exchange information about convictions; that convicts are known or not known according to the chance of their committing their first crime in one country or another.

This generalization is comparatively easy when it concerns the native-born. Each country might receive information of all the convictions of its subjects in other lands. We do not say that there would not be errors and omissions and it would involve much clerical labor, but this is at the basis of the replies that must be given to the question. It is the first step in effective joint judicial proceedings in the domain of criminal law.

The theory is more difficult to carry out if it concerns foreigners convicted in one country who then go to other lands. How to organize a method to meet these cases and to find out where they have been convicted will be difficult. But if each
CONDITIONAL LIBERATION.

BY M. BERENGER, PRESIDENT OF THE PRISON SOCIETY, PARIS.

We shall confine ourselves here to a consideration of the French law and the amendments that might be made to it.

The law of 1885, which established conditional liberation for adults, prescribes disciplinary régime in prisons, based on the daily report of conduct and work of the convicts, with the idea of reforming them and preparing them for conditional liberation.

The law provides that anyone who is not recognized as a legal recidivist may be conditionally released after three months if the sentence was for six months; otherwise after the expiration of half his sentence. If he is a legal recidivist he must serve two-thirds of his sentence. He may be recalled after such release in case of habitual and public misconduct duly proved, or by breaking any of the rules and conditions subject to which he was released. Release is absolute at the time of the expiration of the sentence if the person has not been recalled.

The authority to release conditionally or to recall, rests with the Minister of the Interior through the prison administration.

In the case of revocation of the release the rest of the unexpired term must be served in prison.

Those who are conditionally released are under the surveillance of the public administration, which may confide them to a society or to guardian institutions. In that case the society receives ten cents a day for each one conditionally released for the time that his sentence would last, unless that allowance exceeds one hundred francs.

A law of 1904 makes these conditions applicable to army and navy convicts.

This law has worked well and there has been little fault found with it except that too many are liberated under it. These criticisms are baseless, as figures will show. During the last five years that it has been in operation the number of those conditionally released is only one in a hundred of those sentenced, and the number returned is but two in a hundred, while the
recidivists of the other convicts is more than forty per cent. Far from having increased crime, as has been feared, it is the most efficient curb to recidivism, and it is desirable that even more convicts should be conditionally freed.

However, is the law susceptible of amendment? Assuredly in three points.

It is optional with the court to grant conditional release, but the original intention was that there should be a marking system and that no one should be liberated without having the minimum number of points required. But the administration thus far has declared that to be impracticable in French penitentiaries. It certainly is desirable that some substitute, then, should be found to guard against arbitrary decisions.

Another criticism is that the necessity of consulting with so many—the magistrate, the police department in the home of the convict, etc.—makes so much delay that the system can not easily be applied to persons with short sentences. This requirement might be repealed.

A more serious difficulty follows from that part of the law which allows recall for infraction of the special conditions given in the permission for release. The administration may thus forbid a person to stay in a certain place when his sentence made no such interdiction. A list of places forbidden to discharged convicts has been drawn up. At first it was confined to the city of Paris and the suburbs, or to the neighborhood of Lyons, where it was deemed dangerous for public safety to have convicts assemble, but little by little that has been extended. A large number of other cities, rural villages and even whole departments have claimed the favor of being exempt and have obtained it, so that now at least fifty of the chief cities and great industrial centers, three of the departments and all of Algeria and Tunis are on the list. It is easy to see how such a state of things interferes with a convict conditionally released when he is looking for work. The law which made it possible for a man to go out and work, if he deserved to, thus creates a serious obstacle to his reformation, for it is only by securing work that he can be kept from falling again into crime. A bill has been presented to parliament to correct this.
ILLEGITIMATE CHILDREN.

BY HENRI JOLY, HONORARY PRESIDENT PRISON SOCIETY, PARIS.

A child can demand the intervention of the public for its care when it is evidently badly used by the adults who have accepted the charge of caring for it, or who should have accepted such charge. An illegitimate child may be brought up in an irre- proachable manner by its mother if she does not abandon it, or by its father if he acknowledges it as his. On the other hand, a legitimate child may be abandoned, maltreated, driven into wrongdoing by its own parents. And it must not be forgotten that besides children born out of wedlock there are others thrown out of wedlock, out of the family, through divorce. The same dangers may confront each of these classes of children.

Society has every interest in encouraging marriage and the family. In the total population of France there are eight illegitimate children to the hundred. In the population of reform schools they form 14 per cent of the boys and 19 per cent of the girls. There is reason to regret the indifference which puts on the same footing the free union and the legal union, and which in certain cases gives the same aid to the concubine as to the legal wife, but when a juvenile commits an act contrary to the law it is that act which calls for the attention of society, whatever the antecedents of those who brought him into the world. Whether a juvenile offender be a natural child or a legitimate one, he is treated only according to the common law.

The minor child is not alone responsible for his act, and that must be remembered in giving him his liberty. It is clear that in releasing him it is easier to give him back to his legal family than to an unmarried mother, living alone, without the protection of a husband, or to a father and a mother living together, to be sure, but with a legal right to separate next day. But in choosing measures for these children the judge must follow for all the common law.

The lawmaker will not go wrong if he takes measures to make it more difficult for the father to abandon his natural child, if
he will see that there is an equitable treatment of seduction, and that promises of marriage are observed and that one who assumes certain relations shall be held to his responsibility.

It is to the common law that one must appeal to see that guardianship is provided for every child without legal parents or having them no longer. The unacknowledged natural child is in a particularly dangerous position. It is well known that illegitimate children who were not acknowledged during their earlier years, when they reach fifteen or sixteen become suddenly the objects of attention and apparent solicitude from those who claim them with a desire to exercise paternal authority over them. It has been often enough seen that this is only to secure the labor of the young boy or the young girl. The mere affirmation of a man or a woman who were missing when there was a duty to fulfill and who reappear only to claim a right, is not to be accepted without sufficient guaranty. The formation of a court of guardians would permit such tardy claims to be investigated and submitted to the judicial authorities. That would be but one of the advantages of the establishment of such an association of guardians as the friends of neglected children have long pleaded for.
MENDICANTS AND VAGABONDS.

BY L. VERVAECK, M. D., PHYSICIAN OF THE PRISON, BRUSSELS.

It is difficult to specify rational and efficacious remedies without knowing the anthropologic and social conditions which accompany, if they do not explain, vagabondage.

I. According to our investigations vagabondage depends more on the circumstances and environment than on the defects inherited by the individual. There are among vagabonds who are recidivists numerous abnormal cases, bearing physical and psychic defects, incorrigible, vicious and dangerous individuals who should be indefinitely confined.

On the other hand, there is a category of vagabonds, not very numerous, who are the victims of a series of misfortunes, sickness, trial, loss of property, who are discouraged and despair of regaining an honorable place in society.

With these exceptions nearly all vagabonds owe to intemperance and evil surroundings the occasion, rather than the cause of their fall.

II. The immediate cause of the beginning of vagabondage has to do with the callings of the person in about 50 per cent. of the cases; to physical causes, one-third, and in from 15 to 20 per cent. to intemperance, idleness and evil conduct.

III. In the enormous majority of cases confirmed vagabondage is incurable. In Belgium the number of recidivists oscillates between 85 and 95 per cent. (Through the prison of Minimes in Brussels, of which I have medical charge, 5,000 beggars and tramps pass annually.)

IV. Forty per cent. of the vagabonds have a court record, and many crimes, whose author is unknown are committed by them. Their criminal tendencies have almost a specific character. The motives seem to be envy, hatred, vengeance. They do evil without premeditation and often with no personal gain. Offenses against decency, and sexual criminality characterize them. Beggars rarely have a court record; their misdemeanors are less grave: drunkenness, assault, minor infraction of the law.
V. The etiology of vagabondage is complex.

VII. Among the causes of vagabondage due to a change in the constitution may be mentioned: old age, a state of senility, natural or premature; the results of illness, far or excess of some kind; bodily infirmities, congenital or acquired; chronic disease, such as asthma, bronchitis, cardiac affections, nervous disease; mental disease, idiocy, dementia, general paralysis; alcoholism and other intoxications; hereditary degenerative defects.

VIII. Among the factors leading to mendicancy and vagabondage great importance must be laid on the breaking up of the family. This may be caused by the premature death of the parents, work outside the home of the two parents, the deaths of the mother, chronic sickness of the father, the bad example of the head of the family, widowhood, celibacy, remarriage, the absence of children, and divorce. Some of these causes lead especially to the moral abandonment of children and their becoming beggars.

Causes relating to employment play a great part. In half the cases the stopping of work, often involuntary, has been the direct and exclusive factor in inducing vagabondage. These cases should be studied because such causes alone seem insufficient to turn an able-bodied man into a tramp. Among other causes are lack of skill, rural exodus, trades with periodic pauses, strikes, industrial crises, discharge of elderly, unskilled or sick workmen from factory and shop, peddling of goods and other easy trades allowed to strong and vigorous men or youth of both sexes too lazy to learn a trade. Added to these are evil conduct, excess in drink, thriftlessness, bad companions, loss of work, etc.

IX. Among the social causes may be mentioned the desire to imitate those in higher social positions and enjoyments, such as can be had only by those privileged by fortune. The diffusion of education, of science and of hygiene opens new horizons to the workmen with corresponding desires, which cannot be granted.

In studying the social etiology of vagabondage more closely one sees in the individual the disappearance of the family feeling, the disregard of old parents, the desire to get rid of infirm members of the family, the love of luxury, the weakening of the sense of duty and of energy and finally the degradation of character from receiving charity.

On the side of the community we see the detestable organization of public charity, creating families to be assisted, and the blind charity of innumerable beneficent institutions founded to aid the suffering and the unfortunate which result in reality in the raising up of persons who accommodate themselves only too easily to the régime of assistance and soon prefer alms to toil.

We regret also the insufficiency of sane philanthropy, mutual insurance, savings banks, protection of the wife and the woman worker, etc. It is also regrettable that the authorities in rural communities prefer to send their invalids to state asylums instead of uniting and building their own hospitals and asylums. The absence of protection for those injured at work is another thing that puts individuals in social inferiority. Then there is a growing feeling that physical work is dishonorable, with a desire to escape it. The coming into the city of crowds of untrained girls and workmen, leaves the fields untilled. All these things contribute to vagabondage, and finally the laws, which seem made only to meet the conditions of work for the able-bodied laborer, are responsible.

Thanks to the minimum of salary, the limitation of hours, the legal regulations of the relations of workman to employer; thanks to that new social legislation whose theoretic equity rests on the fragile basis of a Utopian individual equality and which takes no account of the sad realities of human existence, we see cast out from the factory and the shop the artisan who has become old or infirm. It has become impossible to keep them in modern industries which require good workmen, skilled and strong so that the employer may pay high wages for short days of labor.

XII. Vagabonds may be divided into several classes: occasional, involuntary, professional.
As to the means for reducing the number of vagabonds and beggars:

1. It is more useful, and perhaps easier, to affect the social conditions which favor their production than to transform the individuals who have lost the habit of work.

2. For the vagabond type, the recidivist, there should be a severe regimen, indefinite confinement in a workhouse. For the involuntary vagabond work should be found and it should be made easily possible for him to find his place again in society. For the great mass of them there should be a variety of measures provided so that each class should be sure of humane and rational treatment.

It is specially necessary to look after those whom one finds at the first step in vagabondage, from physical or industrial reasons, so that in the very beginning they may be restrained and returned to society.

4. The treatment of recidivists and drunkards—always uncertain—should be such as to secure social safety at the least possible expense.

5. It is necessary to investigate with care the court record of the vagabond and the offenses which are habitual to him in order to find the treatment best suited to him.

6 and 7. The treatment of vagabonds should be such as to combat intoxication and nervous depression; and, besides the medical and moral treatment, there should be such educational efforts as will fit the usually ignorant and unskilled vagabonds to do something.

8. The interposition of the physician is at the basis of the treatment of vagabondism. He should examine the subjects carefully in order to find the course of treatment best suited for them.

9. The reconstitution of the family ties seems indispensable to secure the best results. Isolated, the vagabond, when released, will almost fatally fall back into his evil ways.

10. It is necessary at any cost to prevent the stopping of the work of able-bodied men and to encourage those not able-bodied who desire occupation. For the latter there should be the teaching of a trade adapted to their strength by which they can earn a living.

11. Mutual aid societies and savings societies should be encouraged.

12. There should be careful classification.

13. It is useless, not to say dangerous, to release vagrants incapable of self-support and of behaving themselves.

14. Vagrants must be looked after for some time after their release so that they may be sustained in their efforts for the first years after their return to the common life.

What improvements should be made in workhouses for tramps? In the first place let us define what the establishments for beggars and tramps should be.

About an agricultural colony there should be two series of institutions. The first should include a trade school with shops for those who are not able-bodied and for cripples; a hospital for the sick; an asylum for the infirm and aged; a refuge for the abnormal, idiots, epileptics and harmless demented. These philanthropic efforts should care for those who need it and give them training in occupations suited to their conditions and infirmities.

The second series should be for the punishment of able-bodied tramps or vagabonds: the idle, the intemperate, the vicious. Besides an asylum for the intemperate and a penal section for sexual perverts, dangerous vagabonds, etc., there should be workshops where the vagabonds should be put at hard work and agricultural work of a milder type.

The central colony should be divided into two sections, workhouses for those whose liberation is near, etc., where the work should be paid for and a good deal of liberty be allowed. The second section should be devoted to the medical and anthropological examination of the vagabonds in order to classify them.

The whole colony should be under a double direction: the administrative and the medical. It should be in close relations with various charities, mutual benefit societies, guardianship societies and employment bureaus. It is highly important that
those who represent such societies should regularly visit the
colony. It is important to keep track of these vagabonds after
they go out, and the members of the guardian societies should
have this delicate task.

The organization of such establishments in Belgium meets the
requirements up to a certain degree. The dépôt de mendicité
is for the able-bodied professional beggars and for vagabonds
of a disreputable type. The other part of the house is for those
who are more unfortunate than culpable. Young delinquents
and morally abandoned children are taken to charity schools.

In the agricultural colony the vagabonds grub up the soil
or work in shops for the prisons or for the colony itself, sometimes
for private enterprises. Of their wages, 30 centimes a day,
a third is given to the men and the rest goes into the common
amount.

To sum up the reforms that might be made in Belgian
refuges for beggars and vagrants they are as follows:
1. To subdivide those where the population is too large in
order to avoid the danger of too many men difficult to direct.
2. To base the classification not on the kind of work but on
the moral, mental and physical character of the inmates.
3. To develop the medical service.
4. To create opportunities for trade teaching for those not
able-bodied who should have the monopoly of such work.
5. To pay better for the work of the inmates and to see that
a better use is made of their earnings when they are released.
6. To interest the heads of charitable institutions and of
industrial establishments in the fate of vagabonds.
7. To organize a group of refuges for the first years of return
to the common life.

Independent of workhouses what measures might be adopted
to repress vagabondage? They are of two kinds:
A. Preventive measures:
1. In the legal domain to have laws making idleness a mis-
demeanor, and the right of men out of work to labor.
The recent Norwegian law seems to have happily solved the
question. An able-bodied man who lives in idleness or lives by
begging is compelled to work in a state wood-yard, in a land
colony or for some private person. In case of refusal or of
repetition of his offense he is put at hard labor in a workhouse.
The right of work for every man, which is the logical corol-
ary of making idleness a misdemeanor, ought also to be san-
tioned by law.
2. The creation of intercommunity hospitals and refuges
scattered throughout the country.
3. The organization of trade schools and workshops for inval-
ids, crippled and infirm persons.
4. The encouragement of all provident societies, etc.
5. The monopoly of easy ways of making a living for the
aged, the infirm and the crippled, such as the sale of papers, the
distribution of printed matter, the peddling of fruit, the sale of
flowers, in a word, all the street occupations so numerous in
cities, and which this class cannot now undertake because of
competition with the able-bodied who are perfectly able to work
at a trade.
6. Severe repression of the exploitations of public charity,
especially childish begging, which too often masks idleness and
vice.
7. A more rational organization of official benevolence,
whose mission should be to prevent need rather than to minister
to it. It ought also to take steps against the heads of families
through whose misconduct or intemperance the necessity for
public charity is felt by wife and children. It ought also to
interest itself in the manual and trade training of children so
that they shall not fall to the charge of charity.
8. Radical transformation of the methods of private charity.
Alms create the beggar and develop the spirit of idleness.
Modern charity instead of helping men to find in their misfor-
tunes the best stimulant to conquer their failures, accustoms
them to being helped, and so to lose the feeling of self-respect,
ending in their finding it easier to beg than to work.
The principles to be followed in private charity should be:
Aid by means of work, refusal to give alms in money, or gifts
of any kind to unknown beggars, and especially the cooperation
of all philanthropic efforts. That can be secured only by a federation of charities, leaving to each its autonomy and freedom of action. With a central charity office the multiplication of gifts to one family and the exploitation of benevolent people by professional beggars would be avoided.

The free distribution of soup, medicine, clothes, etc., should be reserved only for the indigent. It exercises a detestable influence in many families of working people.

B. Measures to prevent recidivism in vagabondage:

It is useless to spend so much money in reforming vagabonds and beggars if we leave them without moral support when they are released and thrown back into the common life. Only those should be released who are capable of self-support. The infirm should go to hospitals, public or private. The incorrigible should go to workhouses. The man who means to regain his place in society should be placed in a shop or factory and entrusted to some one who will look after him, a member of a guardian society. It will be his duty to follow the man, to counsel him, to stand by him in his trials and to inspire him with self-respect and courage that he may persevere in the hard road he has to follow to regain his place in the community.
MENDICANTS AND VAGABONDS.

BY LOUIS RIVIERE, MEMBER OF THE PRISON SOCIETY, PARIS.

Few penological questions have caused more ink to flow than the proper treatment of vagabondage. To travel, even without money, has nothing reprehensible about it. That which calls the attention of the criminologist to it is the possibility of the traveler without means doing something unlawful to secure what he must have for his needs. If a man has no means, no trade, no profession he must live upon others. If he appropriates what he must have by violence he is a thief; if he acquires it by voluntary gifts he is a mendicant. In both cases he is a parasite and lives outside the social law and is always a possible criminal.

The subject of the best methods to be adopted in dealing with mendicants and vagabonds is not now taken up for the first time by the International Prison Congress. In the Congress at Rome in 1885 it was considered. Again in Paris in 1895 the subject was taken up, and after full discussion the following conclusions were reached:

1. Society has the right to take even coercive measures against mendicants and vagabonds (beggars and tramps). Along with this right there should go the duty of providing public and private aid and oversight.

2. The treatment of these two classes should differ according as they are (a) invalid or infirm poor; (b) beggars or accidental vagrants; (c) professional vagrants or tramps.

The first ought to be assisted till they are able to earn their own living; the second relieved by public or private charity or placed in institutions where work is obligatory; the third should be placed under such severe discipline as will prevent a repetition of the offense.

3. The most efficacious measure for professionals is prolonged imprisonment in work colonies, to be released only after reformation, when further detention seems unnecessary.

This paper considers only what France has done in this direction since 1895. In November, 1897, a commission was appointed
to see what means could be found to lessen the evils of vagabondage in rural communities. A bill was introduced on the subject in 1899, but it failed to become a law. In 1907 the same bill, amended and adopted by the commission of criminal legislation, was again presented to the Chamber of Deputies. At the same time two other propositions were introduced. One of these provided that foreign itinerants should be forbidden to enter France unless they had two passes, one from the chief of police at the frontier and one from the police of the place where they planned to stop. Failing to produce such papers their vehicles were to be turned back to the countries from which they came. In addition, foreigners coming in this way to the frontier were to deposit a certain sum of money, the receipt for which they were to show on demand.

(Belgium, Germany, Switzerland, Bavaria, Alsatie, Wuertemberg and Austria jealously guard their frontiers in a similar way.)

The third proposition was made in January, 1908, calling for a rescission of the laws relative to vagabondage and mendicity, organizing work for those capable of it and the inspection of itinerant workmen. This proposition was made the basis of a report which was presented in July, 1908, by a commission appointed to study the subject.

The commission applied itself first to trying to dry up the source of vagabondage by extending to the whole of France the methods adopted for Paris in reference to juvenile vagabonds. When a child is arrested for vagrancy he is not sentenced, but is placed either with his family, if they can give the proper guaranties, or in a public or private institution, under the control of the court. This surveillance may last till the time of majority unless the boy enlists in the army or navy.

The next suggestion was as to the amending of the legal definition of criminal vagabondage so that there should be a distinction between the able-bodied and those unable to work. In the same way there should be a distinction in the treatment of mendicants. Those who are able-bodied should work and each department should have some place where they can find employment.

With such precautions repressive measures may be adopted. Still more severe measures may be employed for recidivists and habitual beggars. After a fourth offense the misdemeanant may be sent to a house of correction from two to five years. Conditional liberation may be granted if conduct is satisfactory.

Great latitude is allowed to the administration in the organization of labor colonies. The inmates are to learn trades which they can follow on release, and they are to be specially employed in cultivating land. The outdoor work is to be looked on as a reward for good conduct, as that constitutes an excellent method to prevent escapes. A colony of five hundred inmates is considered large enough.

On leaving these labor colonies there should be probation officers to look after the persons released from them. It is of little use for a man to learn a trade in such an institution unless there is a place found for him where he can follow it.

Another bill was introduced into the Chamber of Deputies in November, 1908, to regulate the movement of tramps and to distinguish between those called itinerants (ambulants) and tramps (nomades). The itinerant is one who has an occupation which keeps him moving from place to place. He may be honest and pay a license. He is simply required to register with the chief of police and declare his occupation and the object of his going about. He receives a pass which identifies and protects him as he journeys. Non-declaration is a misdemeanor for which there may be a fine of from one to three dollars or imprisonment of from one to five days.

The tramp may travel alone or with a family. When they go as a family they have only a wagon as a domicile. If they have a trade it is generally a suspicious one. The men are quacks, horse jockeys, fortune tellers, trainers of bears, or something of that kind; the women interpret dreams, foretell love affairs, etc. In short, these nomads live by lying and stealing and are aided in their ways by children who are not always members of the family living together in the covered wagon. The single tramp usually pretends that he is in search of work, though that is what he most fears to find. He is often
a dangerous criminal. The chief crimes in country places are imputed to this class. The bill provides that this class should have a passport from the chief of police. For several together there must be the names of each person. There must be blank pages for the visa of police officers in other places. Whenever they stay more than twenty-four hours in a place they must leave their passport with the chief of police. Non-observance of the law is punishable by fine or imprisonment. If a false passport is presented it may be punished with imprisonment of from six months to three years.

Another provision in the bill is intended to prevent tramps from spreading disease through the country.

CONCLUSIONS.

1. That the necessary corollary of the effort to suppress vagabondage and mendicity, should be the establishment of night refuges and of workshops for the benefit of involuntary tramps, by either public or private funds.

2. That establishments for vagrants and mendicants should afford practical work and that as far as possible they should take the form of agricultural colonies.

3. That there should be probation officers to look after those conditionally liberated.

4. That all foreigners entering the country on itinerant occupation should have identification papers, or should deposit a certain sum in lieu thereof.

5. That an international conference should be called to consider under what conditions itinerants may be allowed to pass from one country to another.
THE DEATH PENALTY IN SWEDEN.

BY VICTOR ALMQUIST, HEAD OF THE PRISON ADMINISTRATION, STOCKHOLM, SWEDEN.

The death penalty was employed in the beginning of the 19th century and has existed since 1864 in full force. It is imposed for homicide committed by a prisoner with a life sentence unless there are mitigating circumstances. Death, or hard labor for life, may be imposed for an attempt against the life of the king; for high treason; for murder, except the infanticide of an illegitimate child; for abortion which causes the death of the woman; for rape with the aid of a narcotic; for arson which causes the death of any person. The number punishable by death has been reduced since 1864. Since 1864, 124 persons have been condemned to death; only one since 1904.

The executions are in the presence of a limited number of official witnesses within the prison, by decapitation by the guillotine. Between 1859 and 1909 there was one commutation of sentence, and during that time no one was known to commit suicide to escape the death penalty.

Statistics show that homicides have been reduced almost one-half during the last four decades, that is since the death penalty has been so rarely applied. It is evident that the restriction of the death penalty has not increased crime. I am tempted to say that the man who sees the state shedding blood fears less to shed it himself.

Public sentiment is generally in favor of the restriction of capital punishment. There are always persons who demand the death of the criminal when a brutal murder has been committed, but that is not the attitude of the courts nor of the king. The effect of doing away with the publicity of execution has been favorable to public morality and upon crime.
THE CARE OF DEFECTIVES.

BY HENRY BAIRD FAVILL, M. D., CHICAGO.

In considering the proper care of defectives the first thing to be decided is the attitude of society toward the defectives who come under its guardianship. The problem of the procreation of defectives is still to be solved. The problem of the care of defectives is upon us. How shall this duty be met?

Practically, under our present conceptions, those who need custodial care are determined, by conditions of economic dependence. But that test is insufficient. It permits full freedom in society to many who for the sake of future generations should be somewhat restricted.

Here, however, I limit myself to asking whether there shall be institutions devoted to vicious defectives solely, or whether they shall be under the charge of institutions more generally administered? They must be cared for with reference to their moral obliquities and also in such a way as to prevent the development of such moral failings.

Two things must be studied: What method is best for the individual? What method is the best for society, especially looking toward the prevention of defectives?

It is questionable whether dangerous tendencies are fundamentally moral defects. In competent hands they can frequently be eliminated: in incompetent they can be developed. They are more matters of accident, opportunity and imitation than moral perversion. Educators agree that the essence of successful education is a small unit. Only with wise classification can the highest efficiency be reached. This requires no argument. The practical question remains how much can society afford to expend for enlightened and adequate management of these defectives? If they are to be permanently in custody the state has less at stake than if they are to be free. If they are to be free, the state can ill afford to spare any pains of an educative and preventive character. The accomplishment of proper development of individual cases is greatest in special institutions. Bad habits are intensely contagious and these dangers
are more acute among defectives. In conditions where there is power to transplant from one community to another it ought to be possible to limit this insidious contagion. There is an added advantage in such transfers; it relieves an administration from the need of classifying inmates on the basis of conduct or upon a punitive basis. The less these conceptions enter into the management of the defective the easier the path toward mental reconstruction.

It is important to escape the error of superficial classification. Is a person vicious because his act is vicious? If so, is it intrinsic and permanent obliquity, or is it amenable to treatment? What factors of extenuation are there? Provisional disposition of abnormal types is perhaps justified by social and economic exigency, but it is not the less inadequate. It must be replaced by the scientific method. Study of the normal is fundamental to social progress, but thorough analysis of the abnormal is as indispensable to social stability. The world can not afford to ignore its defectives as a field of study and as material with which to work toward corrective influences. Every almshouse, prison and insane asylum offers opportunity for such study. The value of such study is in its reflex upon society.

Research, then, is the key to our present need, and for purposes of study there should be the smallest groups, with the highest obtainable ability and permanence in administrative officers. In other words, let there be segregation of vicious defectives under specialists.

This should be with the objects: 1. To eliminate mental and moral contagion. 2. To permit transfer back and forth as classification becomes more accurate. 3. To furnish a laboratory for specific study.

The establishment of a large defective population, wherein classification according to individual needs becomes not only possible, but necessary, will at once create a demand for the highest intelligence in administration.

The advantage of adequate facilities for the study and correction of such individual tendencies will be felt both by society and the individuals and will be of help in the study of many social problems.
VAGRANT CHILDREN.

BY F. GROSSEN, DIRECTOR OF THE CORRECTIONAL SCHOOL, BERNE, SWITZERLAND.

In the brief space here allowed only the principal causes of idleness and vagrancy (truancy) in children and the most suitable remedies can be sketched.

One of the chief causes of the demoralization of children is the overcrowded tenement, with the lack of air, of light and the danger to morality. This crowded tenement house life, which has been brought about by industrial pressure, is a real foe to humane culture, to morals and to health. From this sort of habitation the children are crowded out upon the streets, where they run still further moral peril. Vicious surroundings are the principal cause of moral degeneration in children and youth, and consequently the source of crime.

Another frequent cause of the unhappy condition of family life is that, as the result of changed economic conditions, the mother is taken from her home and her children to follow some industry. In many a place there are no longer mothers, nor educators, nor protectors of childhood in the home, for these women are compelled to work for the support of their families. The family is thus broken up and the children are morally abandoned and fall into idleness and vice. I do not hesitate to say that the increase in juvenile crime bears a direct relation to the fact that so many married women work in factories and that the children are not properly cared for and watched over.

Schooling is an excellent means of improving morals, but it loses its good effect if the rest of the time the child is in a bad environment. The public authorities ought to energetically combat the habit of children roving about the streets.

The evil is still greater when the demon of alcohol, the thirst for luxuries and sensuality, unfit the parents to care for their children and to bring them up properly.

The reports of educational institutions for reform show that the great majority of juvenile delinquents come from cities
which are industrial centers. In the institution which I superintend 74 per cent of the inmates come from the city, where before their entrance they had led idle, roving lives. In reformatory institutions one learns to know the sad results of idleness in youth. If, on the one hand, philanthropy ought to protest against the premature exploitation of child labor in factories and shops, on the other hand it cannot be denied that idleness is the pernicious foe to all normal development.

The means which I should propose to combat the evils of idleness and vagabondage in children would be:

1. Withdrawal of the paternal rights when the parents show themselves unworthy or incapable of bringing up their children properly and the appointment of a guardian who should take charge of the morally abandoned child and be responsible for his training till the child is of age. If the guardian is animated by love for the child he will be able to exercise a great influence over him. He would be of special aid in looking after illegitimate children, the most of all to be pitied, and would be a help to their mothers. He should try to find the fathers of these illegitimate children and see that they pay something regularly toward their support and education.

2. The establishment of day nurseries and guardian schools. These are of great help in caring for children whose parents must go out to work. In Berne, for example, twelve such institutions show what a demand there is for this sort of help. In replacing the family they keep the children off from the streets with its pernicious influences.

3. Placing morally abandoned children in good families or in industrial schools in the country. The farmer has work for people of all ages. Children can learn to work in the country in a way that will insure them employment when they are older. The young girl can aid in the house and learn to cook, the care of poultry and of the house, while the boys will learn the work of the stable, the fields and the woods. With nourishing food and milk instead of alcohol, and with suitable work they soon feel like members of the household and are looked on by the farmer as his own children. By thus securing young, strong recruits the work of farming will itself be better for this method.

Children who prefer some other occupation ought to have a chance to follow their tastes, and they should be apprenticed till majority.

The task of the institution is to train those who are more or less degenerate, who have bad habits, and to strengthen their characters and instil habits of order and industry by teaching and by example, so that on leaving the children will lead an honest, regular life. In the institutions there should be proper attention paid to work, rest, food, dress, hygiene; with such treatment many a child who had seemed idle and disobedient has overcome his reluctance to work and has learned to be obedient and industrious, thanks to the regular life which reigned in the institution. It goes without saying that they should exist only for special cases, for after all the family training is the best for a child.

The work of guardians and of schools should be inspected and reports made to the authorities.

One cannot tell in advance what such methods would cost, but there is no work for the state or for the people of so great importance as looking after the welfare of childhood.

4. Among other things that must be done is the placing of vicious parents in workhouses or homes for the intemperate, fighting against alcoholism and lack of employment; in general raising the economic and moral plane of the people by educating childhood, by social legislation and by humanitarian efforts. By public and private cooperation one will surely prevent the causes of the neglect of children and will effectively do away with juvenile delinquency.
JUVENILE DELINQUENTS.

BY J. A. FELINEAU, CIVIL JUDGE, BARBEZIEUX, FRANCE.

The young vagrant, the young beggar, the young thief, is one day arrested. He is taken to the police station and to the prison of detention, where nine times out of ten he comes in contact with the worst criminals, hears their talk, listens to their advice. Justice does not seem to him so terrible. He sees the arrogance of criminals with the magistrates, hears the laughter of the audience at the coarse jokes, and when his turn comes imitates these chiefs in crime as if he wished to earn his own first decorations. Let no one say that we exaggerate. As advocate and as magistrate this sad spectacle has been too often under our eyes. There is no spectacle more demoralizing.

If the child is returned to his home it is usually a return to vagabondage, to begging, to stealing, to crime. If he is sent to a reform school it is not much better, for there is the daily contact of the bad with the worse, of the curable with the hardened, of the normal with the abnormal. This, of course, might be lessened in evil effects if there could be a closer classification in institutions. Still it is not a palliative that we seek, but a remedy.

It would seem that the United States have found that remedy, for they have inaugurated a system which merits close study. We will give the chief features of this system as reported in the Musée Social, 1906 (Arthur Rousseau, editor, Paris, No. 4.

[Statistics concerning the children’s courts of Denver, Chicago and Salt Lake City are given.]

It may be summed up in a sentence: children are snatched from the army of crime and saved from a sad destiny. What an excellent social protection! And that is our aim.

We might cite more facts to show the excellence of the American system, but it is superfluous here. We have found here elements which in our opinion characterize penal legislation for
juveniles. They are: 1, special courts; 2, liberty under surveillance, social detention; 3, children in moral danger; 4, adult accomplices and negligent parents.

1. The special courts have, if possible, a special judge, a separate room for the hearings, procedure not open to the public, and special decisions.

2. The child who is arrested is never confined in the common police station; never kept in the common prison.

3. In case of incorrigibility or of depraved parents he is sent to a reform school or to some guardian society, but whenever possible he is entrusted to his own family under conditional liberty. That is a characteristic of the American system.

4. There is always an attempt to place the responsibility for juvenile crime on adults, parents or others. Parents or others guilty of negligence or of conduct contributory to juvenile delinquency, are subject to punishment.

The court has within its jurisdiction the care of neglected and abused children and becomes their protector. It is the arbiter in school and child labor laws.

One may say that the American system has foreseen all that in our premises we have considered indispensable to rescue children from crime and to prevent crime among the young.

 Conditional liberation under surveillance is logical, rational, normal when it keeps the child in the family and where, save exceptionally, the child will find care, love, good example and supervision. It recalls its duties to the family, so that it reaches a twofold result: it cures both the child and the family.

The following are our conclusions: Children and youth, delinquent or criminal, ought not to be treated like adults either as to procedure or penalties.

The child must have education and protection. If guilty he must be kept apart from hardened criminals; he is rather to be healed than to be punished.

The reform of the young delinquent or criminal whenever possible, ought to be the work of his own family. Parents and adult accomplices in wrong-doing should be made penally responsible for the crimes of childhood.

We have, then, the honor to present to the Washington Congress the following:

In civilized countries a serious study should be carried on with the object of rapidly creating special courts for children and youth that they may be rescued from crime, with the aid and under the responsibility of their families wherever that is possible.

That there should be an international bureau to take measures to bring this about.
PRISON LABOR IN SWEDEN.
BY VICTOR ALMQVIST, ASSISTANT DIRECTOR PENITENTIARY ADMINISTRATION.

The penal code of Sweden prescribes four kinds of sentences: death, hard labor, imprisonment and fines. Sentences to hard labor may be for life or for a definite time, not less than two months nor more than ten years. If it is a sentence for less than three years it must be spent in solitary confinement; if for longer than that the first three years must be spent in the cell. After three years the convicts may work together by day, being separated at night.

Every convict is obliged to work, but if sentenced merely to imprisonment he may find work for himself.

Formerly when the great mass of prisoners worked in common, the work was given to contractors who paid so much by day for each prisoner employed, to the state, besides a small amount to the convicts. In the smaller prisons, destined for persons accused of crimes or those sentenced only to imprisonment or for short terms with hard labor, the state formerly allowed the local administration to have the income from the work of the prisoners, on condition that these local officers should find work for the prisoners and should share a part of the income with them. Thanks to this arrangement work enough was found for them, but it proved to be too simple to give a man skill to support himself by his own labor on being free. But as soon as they were employed in industries private industry complained of the competition. This complaint was accentuated by trades unions, by the newspapers, and by the parliament even. The demand was made that prison-made articles should not be sold; that convicts should work directly for the state, and that employments such as basket-making, brush-making, etc., by which the blind, the aged and the crippled could earn their living outside, should not be allowed in prisons.

In 1904 the government prescribed that everything needed by the army, the navy, the state railroads, the post-office and
the telegraph which could be made in the prisons of the state should be manufactured there.

A bureau was created in the general prison administration to direct the industries of all the penal institutions of the country. The head of the bureau is always in touch with the military directors, the railroad officials, etc., and learns what the prisoners can manufacture in whole or in part. He studies the most profitable methods, the best materials, indicates which prisons shall make certain articles and supervises the manufacture of these things.

In the year 1908 there were 2,358 convicts in cellular prisons, but the three largest had only 200 in each. The other 43 had not more than a hundred in each and several as few as 30, numbers too small for the organizations of industries. The simpler forms of work have to be found for these prisoners, who are as a rule persons accused of crime or those who are serving short terms. All the other prisoners are sent to different prisons according to the trades. Those who do tailoring go to one, those working in leather to another; cabinet makers and woodworkers to another; saddlers and harnessmakers to yet others, sewing to the woman's prison in Stockholm, the making of mail bags to another prison, etc. As masters of these different industries the best men are chosen and an effort is made to have the prison wardens men with experience in the trade or industry carried on in his prison. Each convict receives a small sum per day, not to exceed ten or twelve cents, according to his industry and skill, half of which is held for him till after he is free.

Most of the cellular prisons were built before 1860 and they are not adapted for making large articles, but by giving to each convict one cell in which to live and one in which to work much can be done. The larger and more complicated objects are made in the central shops, where the men work together.

Vagabondage in Sweden comes under a special law, with a minimum of one month's work and a maximum of three years in the public workhouses. The work is together by day and the inmates are separated at night. There were 586 such inmates

of workhouses in 1908. There are two for men and two for women. The large central one has about three hundred acres, in fields, forests and quarries, where tramps are employed at wood cutting, hewing of stone, work in dairies, in gardening and general agriculture.

The prison labor of the year 1908 amounted to 588,296 days, of which 247,787 were for the army, navy, the railroads, etc., and 340,509 were for the prisons themselves and private individuals. The revenue for the first category was fifty cents a day, for the latter ten cents a day.

In 1904 before the new organization of prison labor was introduced, the total sum of revenue from prison labor was not over forty-three thousand dollars. In 1908 it was over one hundred and fifty thousand dollars, showing the great economic advantage of the present system. As to the moral profit it cannot be expressed in figures.
SPECIAL INSTITUTIONS FOR ABNORMAL CHILDREN.

BY DANIEL PHELAN, M. D., SURGEON, DOMINION PENITENTIARY,
KINGSTON, CANADA.

Thus far we have not provided institutions for abnormal children who manifest dangerous moral tendencies. Is there need for such institutions and should they be separate? Neither the prison nor the ordinary institution for the feeble-minded is the place for such children, so that there can be but one answer to the first question. There should be special institutions for them. Children received into them should receive education suited to their mental condition. All diseases or imperfections demanding surgical measures should be looked after: adenoids, enlarged tonsils, discharges from the ears, diseases of the eyes and lids, strabismus, cleft palate, hair lip, club foot, decayed teeth and dental irregularities. Defects of vision should be corrected, if possible, by glasses. The correction of all these evils may improve the disposition and temper of the children, and they may thus be prevented from developing a tendency to commit criminal acts as a result of fits of passion.

No country has thus far made provision for this special class which has been overlooked and allowed to grow up a menace to society.

What kind of institutions should they be? They should be distinct from ordinary industrial and reformatory institutions. Many of the inmates of penitentiaries are from this class, and had they received proper training the crimes they have committed might have been prevented.

Each child should have individual instruction, for their criminal tendencies vary with each one. The child having inherited a feeble will is easily led into evil habits. He lacks both the moral and physical strength to resist temptation, and he requires efficient supervision, more than he would have in the ordinary institution for the feeble-minded. Not only must he have his physical defects remedied and such an education as he is
capable of receiving, but his better tastes and tendencies must be developed.

The persons in charge of such an institution should be trained not only to deal with special cases, but to detect the early stages of such proclivity to crime. Parents are usually the last to detect weakness in their own children. The expert is therefore needed.

After such training as the institution could give them it might be possible to liberate such children to return to their friends. For the sake of society it might be necessary to transfer them to a reformatory. In doing all of this work it would be necessary to study the antecedents of the child.
THE TREATMENT OF CRIMINAL INEBRIATES.

BY DANIEL PHELAN, M. D., SURGEON DOMINION PENITENTIARY, KINGSTON, CANADA.

Restraint, with abstinence from alcohol and correct diet, are the great factors in the treatment of inebriates. The criminal inebriate is either a criminal from instinct, and his drinking is a symptom of his degeneration, or he is a criminal because of his continual use of spirits, which has destroyed his moral sense and self-control. Both classes should be deprived of liberty and confined in special institutions where military discipline, hygienic supervision and practical work can be employed in their treatment.

Observations seem to show that American criminal inebriates recover more certainly than those born in other lands. Owing to alcoholic indulgence in ancestral lines the foreign-born seem to lack a certain vigor and spirit which makes them more difficult.

Detention for a year would be enough in many cases. A predetermined sentence of two or three years is discouraging. His condition, physical and mental, should be the criterion by which to judge whether a criminal inebriate should be set at large after treatment.

Drinking is frequently a symptom of insanity which manifests itself sometimes after alcohol has been withheld while the person is in detention. Fully 80 per cent of all inebriates are born with defective brains and are descendants of inebriate insane, epileptic or feeble-minded parentage, and at least 70 per cent of crimes are directly or indirectly attributable to alcohol.

Given an institution for the criminal inebriates carried out on these plans, special medical treatment in the penitentiary would not be needed.
JUVENILE DELINQUENTS.

BY P. GRIMANELLI, HONORARY DIRECTOR, MINISTRY OF THE INTERIOR, PRISON SOCIETY OF PARIS, ETC.

By "young delinquents" and "children and adolescents," penal minors are meant. In France, since the law of April 12, 1906, penal minority, which was formerly up to the age of 16, is now extended to the age of 18. The term "procedure" must not be taken too strictly. It is not only the form of prosecution, of examination, of discussion and decision, which are to be considered. The character and choice of the magistrates who are to deal with juvenile offenders, their competence, their manner of procedure, the provisional measures to be adopted while waiting decision, are doubtless intended to be included in this study. But there are other things to be thought of. Are you convinced that in general, when it is a question of a minor, that it is not so much the act alone which has to be considered, but the act as it is an index revealing the tendency and the conditions of life of the one who has committed it? Have you thought that greater social security, as well as the social duty toward the child, demands measures that will preserve him from growing worse, and to reform him morally and physically, often by changing his environment? Do you appreciate that that is the true way, rather than a system of penal measures? If you have considered all these things you will have seen that "procedure" can not be identical for the different ages even of minors.

I. Let us recall the chief essentials of French legislation in regard to this subject.

1. Prosecution and examination are entrusted to the same magistrates and subject to the same legal rules for minors of all ages as for adults.

2. Minors of all ages are subject to the same legal provisions touching detention and provisional release, except that juvenile criminals are kept apart, in separate quarters.

3. The custody of a child may be entrusted to a relative, or a charitable institution, till the judicial decision is given, provided he is less than sixteen.
4. If the act ascribed to a minor is a misdemeanor (délit) the tribunal is the same as for adults, no matter what the age of the minor (le tribunal correctionel).

5. If the act is a felony (crime) and if the minor is less than sixteen, it is still the tribunal correctionel which is competent to take charge of the case, unless the minor had accomplices older than himself, or unless he is charged with a crime punishable by death, or imprisonment at hard labor, or deportation. In these exceptional cases it is the cour d’assises.

6. The rules regulating publicity are the same for minors of all ages as for adults.

7. Whatever the age of the minor, up to eighteen, the court, or the jury, must decide whether the said minor has acted with or without discretion.

There has been an evolution in legislation in these subjects outside of France. The limit of criminal minority varies from seven in Russia to 15 in Sweden. Several countries have organized special courts for juveniles. Within ten years we have seen a change in this direction, as for example in Denmark, Norway, Germany, Austria, Holland and in the Swiss cantons. Under different names and differently organized there are in these countries chambers, or courts of guardianship, generally of a civil order, though having disciplinary power in some cases. They are destined in some states to replace parental authority, to look after juvenile delinquents and morally abandoned children. The Holland law, for example, differs from the Danish. In Holland it is rather for the protection of childhood, without jurisdiction over juvenile crime. In Denmark it has three degrees of jurisdiction: With regard to juvenile offenders under 14 who are not prosecuted before the court they have paternal powers, pronouncing no sentences; for older children they act as aids to the court; for all juvenile and morally abandoned offenders they have the right of guardianship.

May we not here pay our respects, which is their due, to the American children’s courts? Without forgetting the part played by Australia in the starting of juvenile courts, it is just to give the principal honor to the United States for them. The late and deeply mourned Samuel J. Barrows, wrote proudly in 1904: “If one asks what thing marks the greatest progress in the United States in the last five years in judicial methods and principles, one would reply without hesitation: ‘The creation of courts for children.’” It is not to a congress gathered in Washington, at the gracious invitation of the federal government of the great republic, that we could try to describe the children’s courts of the United States, nor to tell their history. There is nothing better on the subject than the excellent account of it given by Mr. Barrows himself in 1904: “Children’s courts in the United States, their origin, development and results,” and for the spread of ideas in France relative to this institution, the remarkable work published by Edouard Julbiet (Arthur Roussel, 1906). Nor would we forget the studies of the accomplished Miss Lucy Bartlett.

Since 1906, twenty-four states have adopted the institution on which Judge Tuthill of Chicago and Judge Lindsey of Denver have put their imperishable imprint.

The children’s court has jurisdiction over minors up to the age of 16, rarely to the age of 18. A special judge presides over them. The audience is limited. The court room is apart from the general court room. The magistrate sits near the child. No one is admitted except those duly authorized. There is no technical procedure. The forms are reduced to the greatest simplicity. The magistrate conducts the investigation and makes the decision, always with the idea of finding the best method of dealing with the case, whether by probation or by reformatory discipline.

The organization of children’s courts is completed by the appointment of probation officers. The two are inseparable. The probation officers may be benevolent citizens, men or women, paid or unpaid, or they may be public officials. They secure the information about the child, his family, and his surroundings. The importance of their service does not need to be demonstrated. Partial adoption of these methods has been made in England, Scotland, Ireland, Germany and Italy, as well as in
the Swiss cantons. But the partisans of reform in regard to proposed legislation are divided. One side, jealous guardians of tradition, prefer amendments to existing laws rather than reform legislation. They believe in having magistrates who understand the cases of minors, for juveniles, but that they should in all cases be the ordinary trial judges and magistrates of repressive courts. Even for very young children they reject special magistrates and whatever the age of the accused they believe in entire publicity. They recognize the dangers, but think the police powers of the presiding officer are sufficient to ward them off.

The other side, without dreaming of overthrowing existing judicial institutions are less opposed to important changes. They do not think that identical rules can be applied to all juveniles. The forms of justice do not seem to them forms that can not be touched. Struck by the grave effects of the mixed audience, even in cases where children above twelve are concerned, they do not hesitate to suggest restricting the audiences, at the hearings, on condition that justice shall be secured by useful assistants and witnesses, whose presence is a guaranty for the judges as well as for the defendant. In a general way they believe that what is demanded is not less dignity, but more simplicity. Frequent discussions of this subject have taken place in the Société générale des Prisons, in the Comité de défense des enfants traduits en justice, in the Congrès de patronage, in the Conseil supérieur des prisons, etc. With reference to these subjects one may read with profit the luminous work on "Les Procédures d'information relatives aux mineurs," by M. de Casabianca.

The bill proposed by the Conseil Supérieur des Prisons in 1909, must be mentioned here. It deals with all juvenile offenders under the age of 18. In this is laid down the principle that no child under twelve who is held to be guilty of breaking the law should go before a repressive court. He is to be transferred by the public minister to a new and special court that shall take charge of the case, and if found guilty, measures of security, of surveillance, of discipline, and of such assistance as may be necessary, are to be under this court. The accused is to be held for safety wherever the magistrate may direct, under the provisions of the bill, but never in a prison. But these are only negative provisions. It is further necessary to verify the facts about the child, to learn all that is possible about him, and to take measures for his interest and for the interest of society, often measures of long duration; to follow up the carrying out of these measures and to modify them when there is need. To carry out this complex program an organ is necessary. What organ? A court, or magistracy, at the same time social and paternal (familial) which will watch over the child without the interference of any other jurisdiction.

Various suggestions were made in discussion, but the majority of the Conseil supérieur preferred to place the jurisdiction in the hands of a single judge, that responsibility might be concentrated. He is to be called the family adviser (Conseil familial). Without giving the details we may sketch this portion of the bill.

The Conseil familial is to be aided by an indefinite number of deputies, men and women, for all that concerns, not the decisions, but the surveillance and care of the children. They should also aid in the inquiries about cases of children from 12 to 18 years of age. They are to be, in short, American probation officers in French dress.

In everything concerning children under twelve the Conseil familial would investigate and decide. His own investigations should be supplemented by physical examinations by a physician. The child and the parents may have counsel. The trial is not public. Magistrates, delegates from the Conseil, members of the societies of guardianship and relief societies, admitted by him, may be present. Appeal may be made to the minister against any decisions of the Conseil. These might arise in case of putting the child out of the custody of the family without their consent, or charging the whole or part of the maintenance of the child on the family.

None of the measures taken having anything of the nature of a penalty or condemnation, the question of "discernment" does not come up. The state attorney (procureur) of the republic is
charged with the responsibility of seeing that the decisions of the Conseil are executed.

Youth between the ages of 12 and 18 would continue to be brought before the repressive judge (criminal court). They may be held for detention in a prison, but in separate quarters. They may be released under surveillance.

Conclusions. I. Juvenile offenders ought to be submitted to a different régime from that applicable to adults. The knowledge of the psychology of juvenile delinquency, of the condition of existence, of the duty of society in the protection, correction and reformation of children and youth; of the need of society to protect itself from juvenile crime, shows that there should be a different method for treating youthful offenders.

II. The little child who has been accused of breaking the law before he has reached the age of twelve, ought not to be brought before the criminal court, nor even before a so-called judge. He should be brought before an authority competent to verify the facts, to investigate his usual conduct, his education, his surroundings, and if necessary to take means for taking care of him, watching over his education, and giving such training, discipline and aid as may be needed according to the circumstances of the case.

III. This principle granted, it does not permit identical modes of application for all ages included in the period of penal minority.

IV. This important work requires a special magistracy, which, without being a tribunal, should advise and decide with regard to juvenile delinquents under twelve years of age. There may be, however, difference of opinion as to the name to give to this court and as to its organization; whether the power shall rest in one, two or several persons, or in a select council, where the judicial element should always be represented, but should not be the only representant.

V. This court, which should be under the public minister, should act for the good of the helpless as well as for the safety of society, and the forms of procedure should be simple. The hearings should not be public, but public authorities should be represented, and independent persons known to be interested in childhood may attend. The decisions, which may always be modified under certain conditions, may be appealed. Families may have right of appeal in certain cases and to the minister in all cases.

VI. This court, whatever the mode of its organization, ought not only to give decisions, but to make investigations, to exercise the power of probation, and release under surveillance, acting as a central office, with deputies of both sexes analogous to American probation officers.

VII. It will always be necessary to have the custody of the child under twelve. Suitable means of guarding and caring for him ought to be put at the disposal of the magistracy. But detention in a prison should not be allowed on account of its corrupting effect on a child if in contact with other prisoners, and as too severe if placed in solitary confinement.

VIII. Juveniles accused of crime, after the age of twelve, should be prosecuted before the criminal court, but always after examination.

IX. In regard to these cases the authorities having the power to examine and sentence, should, without going beyond the limit of the existing judiciary, as far as possible be specialized. In France, for example, they should still be trial justices (Juges d'instruction) and criminal courts (tribunaux correctionnels), but under the following conditions:

X. Everywhere where there are already, or where they might be created, several trial judges, one or several of them should be specially charged to be the permanent examiners of these juvenile cases.

XI. Wherever it is possible there should be in these tribunals a special chamber for the hearing. If that is impossible the hearing should at least be by itself.

XII. The criminal court thus constituted should have competence not only in dealing with misdemeanors, but with felonies (crimes).

XIII. Detention may be in a prison in cases where it is necessary, but with separate provision. Liberty must be given
to the examining magistrate to grant temporary guardianship, before sentence, in the family or outside the family, with surveillance.

XIV. The special court instituted for accused under the age of twelve as already hinted, may co-operate with the examining magistrate by furnishing facts concerning accused youth above twelve. This co-operation would have weight in the investigations and in the surveillance. It would not exclude the co-operation of guardianship societies.

The examination should always be followed by medical opinion.

XV. The hearings should not be public. The law should determine who may be present and they should be opened to certain qualified persons. These restrictions should also be applied to cases where minors and adults are implicated together, and in criminal processes where minors of from sixteen to eighteen are liable to severe penalties.

XVI. The question of the age of discernment, or non-discernment, should be replaced by some method better adapted to meet the great diversity of cases.
FIRST OFFENDERS AND PROBATION.

BY A. STOPPATO, PROFESSOR OF PENAL LAW, UNIVERSITY OF BOLOGNA.

The program of questions demands not the statement of principles, but the results obtained in different countries, of the application of legislative measures for first offenders. Statistics alone can not give these results. Though the data may be accurate there must be in addition an investigation of a moral and sociological nature. I shall confine myself to a consideration of the character of conditional liberation and the manner in which it has been regulated and applied in Italy.

The evolution of the idea of penalty has not yet reached the last limit of progress, but it is approaching it by the acceptance by legislation of principles, like that of conditional liberation, which confirm anew the principle maintained by César Beccaria that the essence of the penal system should be placed within the limits of a legitimate defense, and that one of the checks to crime should not be the cruelty of punishment, but the certainty of its application.

The principle that punishment in its application should look to the moral improvement of the culprit is of social importance and the mitigation of penalties for certain offenders and making it sharper for habitual criminals, is a truly social duty. It is certain, long experience has demonstrated it, that short sentences, applied without distinction to juvenile delinquents and first offenders, for certain kinds of misdemeanors, have not always produced good results either as measures of prevention or repression. As preventive measures they fail to deter from crime because they do not take away the hope of escaping with impunity, which is the great incentive to wrong-doing. As repressive measures they do not impress the one who submits to them in such a way that he is more disposed to yield to social requirements. A law has only a theoretic value unless it is for social advantage.

The problem may be divided into two parts. On one side, that which concerns juvenile offenders, the victory seems won
for the principle that in dealing with them it is not a question of a true penalty, but measures of discipline, and education, through the intervention of special courts, and institutions of a social and beneficent character. It is to be desired that there should be an even wider substitution of educative for repressive measures for these cases. The triumph of modern social ideas will be reached when the day comes when minors shall be entirely exempt from the action of penal codes and brought under a régime which shall have no appearance of punishment. For minors I believe we should not speak of conditional sentences, but that the efforts of legislators and philanthropists should be concentrated in securing extra-penal methods—purely and simply educative.

As to first offenders, or delinquents who are not first offenders, who by their character, their antecedents, and the nature of their crimes awaken no grave apprehension, the attitude of the public toward them should be different. For these in particular reformatory methods are suitable and should be applied according to the different traditions and customs of different countries. There are offenders who may be called criminals of passion, and of occasion, for whom the short sentence may prove effective, especially as a deterrent. In these cases the punishment is personal, if I may so express myself, rather than social. Here the idea of chastisement is of the first importance. But if crime can be prevented without personal suffering that is sufficient, provided the ends of society are met. A principle is just in so far as it is actually necessary. The human application of penalties is necessarily imperfect and for some cases absolutely dangerous, because it is practically difficult, not to say impossible, to so distribute penalties that they are adapted to each particular individual. Now, if the conditional sentence is opportunely applied the feeling of justice and social beneficence which inspire it produce a feeling of gratitude and a feeling of solidarity between the criminal and society. That is the great benefit which may be derived from it, but it must be applied with prudence and humanity, sinning neither by too little or too much. The social task of the judge is a delicate one. He must

be a jurist to determine the objective elements; and a psychologist to appreciate the subjective conditions and a sociologist to have them conform to the environment.

The Italian law of 1904 did not accept the system of the suspension of sentence which was accepted by the legislatures of America, Australia, England and the canton of Neuchatel, but it accepted that of delay in the execution of the sentence after judgment has been passed, which has been accepted in various European countries, Belgium, France, Portugal, Norway, etc. In pronouncing the sentence the judge announces the period during which the execution of the sentence may be suspended. The delay may not be less than that prescribed in the sentence nor more than five years.

This then is the Italian law, which does not differ essentially from others of its type. I think that in Italy, at this juncture and with the present conditions of criminality, it would be imprudent to apply the more accentuated system of suspension of sentence, except for juvenile delinquents. For the class of criminals in our population it would be very dangerous and would be especially difficult because it requires a probation system for which at present there is no suitable organization and no individual initiative.

[Tables follow giving the statistics, for three years, of the number of criminals who have had the benefit of a conditional sentence—about 26 per cent in 1908, a number called by the writer "very unexcessive." There are also tables giving the crimes for which the conditional sentence was given. He continues:]

I, who make a daily study of the judicial life of my country, say that there is danger of perverting this method. Crimes of violence, blood and resistance are the chief crimes in Italy. One must also deplore offenses against order, against the family, theft, swindling, fraud. But in too many cases the conditional sentence has been applied to cases which should meet with prompt, decided and severe treatment. Again the benefit has been applied too largely to persons condemned to imprisonment with hard labor, rather than to those who show less perversity.
One must reckon also the number of recalls. That number is constantly increasing. In 1905, 1,717 persons had the suspended sentence revoked. In 1907 there were 3,142 such revocations.

It is important to see if the number of recidivists has increased during these years, that one may see how the suspended sentence affects recidivism. The number has increased. It can not then be said that the first three years of the application of the suspended sentence has exercised the beneficial effect on recidivism that was expected. That is why I maintain that if beneficent measures are to be considered as the result of a rational development of a penal system, it is equally necessary to maintain the principle of repressive, intimidating and defensive measures, as a means of education and of social protection. I would say that besides benevolent social justice for first offenders there should be rigid and severe measures, with an indeterminate sentence, for habitual criminals, who are a permanent social danger.

The conditional sentence is a measure of social justice which may be used for delinquents whose crimes are less serious, who do not show dangerous tendencies and who have violated the law under conditions that permit indulgence; so that it may be believed that after the admonition of the judge they may be trusted to return to free life and mingle with honest citizens with safety. At the same time social security would be shaken to its foundation if it were believed that every first offender should be excused. It is against this danger that all countries should guard in adopting the suspended sentence as an act of justice.

Conclusions: 1. In Italy up to the present time the conditional sentence has been applied too often to crimes and to delinquents who were not worthy of it.
2. In a great number of cases its application ought to be subordinated to an equitable indemnification and the payment of the cost of the trial.
3. For juvenile delinquents even the conditional sentence should be excluded and every form of penal procedure and measures of moral reform should be substituted for them.

4. Legally the function of the judge ought not to be confined to the consideration of legal objective conditions, but he should by law be compelled to take into consideration the psychology of the criminal, the quality of the offense and the conditions of criminality.
5. The solemn and public admonition of the judge in pronouncing a conditional (sursis) sentence ought to be considered as the confirmation of that sentence.
6. It is not necessary to admit suspension of sentence.
7. Benevolent measures admitting delay of executing sentence for first offenders, there should be added severe measures for recidivists and habitual criminals.
JUVENILE IDLENESS AND VAGABONDAGE.

BY GEORGE HONNORAT, CHIEF OF POLICE, PARIS.

Idleness is the mother of all vice. If we consider only the effect of idleness on the children of a city the field is large enough. Who has not been saddened by seeing the boys and girls wandering through the streets, playing truant, hanging round the shops, begging for pennies or stealing from the stalls, pushing against each other and against the passers-by, crowding the book stalls and looking at obscene pictures, insulting women, picking pockets and boasting of it? Vagabondage, begging, stealing, prostitution, are only the first steps on the fatal road of idleness. As the child grows he becomes the adult criminal.

The chief cause of idleness and vagabondage in children is the lack of moral training in the home, the relaxing of family ties and want of proper parental supervision. Another cause is the neglect of schooling. In most civilized countries parents are compelled by law to keep their children in school a certain number of years. But in our larger cities there are not schools enough and where there are schools the law does not deal severely enough with parents who keep their children out of school. Again, the schools close too early in the day. The children are freed from them at four o'clock, while the parents do not get home from work till 7 or 8 in the evening. In that interval what are the children doing? They are running the street with all the evil consequences of that sort of life.

Then there are too many school holidays, when the children are turned loose though their parents are away at their daily work. Such days give great opportunity for vagabondage.

Still another reason is that the teachers sometimes forget that something besides scientific teaching is necessary. Is it not this fault in education which explains why we find in the young generation so many young people who have no moral curb, who respect no authority and who have an eye for nothing but an opportunity to gratify their own desires and caprices? Thus, being defrauded of proper guidance from parents and teachers, they
are easily perverted, especially those born of parents who are alcoholic, syphilitic, consumptive or with a feeble mind.

Another cause of idleness is the cupidity of parents who want to get their children into shops and factories as early as possible, that they may bring in a little money. In such shops and factories the work is monotonous and the pay small and the children desert them for the street. And if they accept the new life of industry in the factory they are often laid off in the dull seasons against their will and so fall into a life of idleness.

The very measures to protect child-laborers, especially in regard to hours of labor, have had the annoying and unexpected result of throwing them out of industry. Certain laws, like the French legislation, having decided that where minors and adults work together the hours for the latter must not be longer than for the former, employers have refused to hire juvenile workers at all, and so they are thrown out a prey to the idle life.

Each of these causes demands a remedy. One of the first is to provide a sufficient number of schools for all the children of school age, and where necessary guardian classes that shall keep those children whose parents are at work till their return. And little girls should be escorted to their homes when their parents can not come for them. Holidays should be reduced in number. Special classes for backward children should be formed. School colonies in the country should be organized, or by the sea, for delicate children. And finally the school should be not only a place for mental instruction, but for moral training; where the mind should be instructed, and the conscience and the heart as well should be trained.

After school age the best thing would be apprenticeship to a trade if possible; otherwise there should be professional and industrial courses, for this is the most dangerous transition period, between going to school and finding permanent work for life. Later, in the mixed shops, where old and young work together, there should be a special arrangement of hours according to each category of workers.

When parents forfeit their paternal rights so that they let the children drift into lives of vagabondage, idleness and vice the children should be taken away and sent to industrial schools, having no penal character, where they can be taught to earn their living.

It may be added that the police should exercise a more strict and careful guardianship on the streets and not allow children to form bands of idle loafers. Other persons also might be empowered to see that such children are looked after according to proper regulations, and perhaps it may be necessary to establish special courts for them.

Conclusions: The way to meet idleness and vagabondage in the large cities then is twofold: preventive and repressive. In the first group the means are educative and moral, with patience. They may be costly, but it is true economy.

As to the means by repression it should be by more active surveillance on the part of the police, charitable institutions and persons delegated to act in cases where society has to act in place of the family.

The following recommendations may be made:
Multiply the schools.
Give a large place to moral education.
Punish severely parents who break school obligations.
Multiply professional courses.
Modify child labor laws in such a way as to secure apprenticeship.
Deal energetically with parents who forfeit their parental rights.
Create reform schools for vicious children for their own sake and to save the contamination of the community.
Have the police keep better watch of the streets and secure aids to them in this through private institutions. Let such agents question the children and when necessary bring them before the public authorities.
Create, if necessary, special courts for children.