

PART II  
*SOME CONCLUSIONS*

“They that turn many to righteousness  
shall shine as the stars for ever and ever.”

## I. OFFICIAL AND UNOFFICIAL REPORTS

OF the thirty-one countries in my list I have been fortunate in securing returns more or less complete concerning twenty-nine. Up to the present no authentic information has been forthcoming from Albania and Lithuania. Concerning the remaining twenty-nine countries, twenty have very kindly furnished what may be fairly regarded as official replies to my questionnaire. Directly or indirectly these replies emanate from the Ministry of Justice or the Ministry of Social Work of the respective nations. Not only is my survey the richer for these reports, but I am filled with optimism for the future of the probation system by the remarkable interest displayed in my modest efforts.

Hardly less important and stimulating are the remaining nine descriptions of probation work which I have been able to obtain. They embrace reports from judges, chief probation officers and prominent social workers.

Whilst I am honoured by the personal friendship of many of the contributors, I nevertheless recognise that it is their enthusiasm for social service and for its younger branch, probation, that has prompted them to assist in making the public aware of what Europe is doing in this field.

## II. LANGUAGE OF REPORTS

An analysis of the returns reveals a number of significant facts. We have heard that the English language is the commercial language of the world, as French is its diplomatic. So far as my returns were concerned, nineteen were couched in excellent English, seven were in French, and the remainder in German, Russian or Danish. I do not wish to stress the language question, for it was most considerate of the Ministries to reply in the language of my letter and questionnaire and I felt greatly relieved at this characteristic piece of courtesy. Moreover, many returns were obtained through the good offices of my friends, who may be pardoned for doubting my linguistic capabilities.

Nevertheless, the proportion of replies in English remains remarkable.

With regard to French, I have been struck by the large amount of European welfare work and the number of European penal codes which have become available to the public through that language. It was to be expected that my survey would involve a certain amount of translation into English. Such translations were necessitated from the Czechoslovakian, Danish, French, German, Portuguese, Russian and Spanish languages.

I willingly and gratefully acknowledge my indebtedness to the polyglot Secretariat of the International Association for Child Welfare of Brussels. Without their co-operation this book would have reached but scanty dimensions.

### III. NUMBER AND ACCURACY OF REPORTS

In all, forty reports were received, so that in the case of several countries more than one report was available. Usually the two reports shed a new light on each other.

Occasionally my friends, knowing my special interest in child welfare, have tended to emphasise this aspect of the question.

Readers will be justified in assuming that replies, etc., are accurate up to the date given with each.

Occasional discrepancies will be found in the dates assigned to a particular law. They are not of material importance to this survey. They may arise from confusion between the date of passing the law and the date when it came into force. A further possible cause of confusion is added when a Ministry of Justice is charged with the duty of making regulations for the carrying out of the law in question.

It is difficult to keep track of what is happening in so many countries, but where information subsequent to the replies in the questionnaire has been received, it has usually been dated.

### IV. PROBATION OF OFFENDERS

“ Probation—one of the most important procedural features of the juvenile court, under which a child, instead of being committed to an institution, is kept under the surveillance of the court until it is safe to release him—is

an evolution of the common-law method of conditionally suspending a sentence. Sir Walter Raleigh was executed under a sentence pronounced against him fifteen years before, after having been put at the head of a fleet and an army in the interim" ("The Legal Aspect of the Juvenile Court," Flexner and Oppenheimer: Children's Bureau, Washington, D.C., 1922, p. 8).

The evolutionary view of probation cited above is borne out by the particulars given below. Most European countries make use of the conditional suspension of sentence, but gradually the newer devices of probation are either superseding the older method or else the two are in operation side by side. It is in legislation affecting minors that probation is making the greatest headway.

In order to estimate the number of countries which may be regarded as having a probation system, some amount of terminology requires elucidation. In the replies to the questionnaire, etc., the following terms are used:

1. Conditional judgment (Finland), conditional sentence (France, Russia, etc.), suspended sentence (Sweden), conditional condemnation (Italy), suspension of the execution of punishment (France), postponement of punishment (Germany), suspension of punishment (Bavaria). In these cases (if the translations are accurate) the judge passes sentence on the offender, but the penalty attaching to the offence is not exacted pending the successful efforts of the offender to make good during a specified period of probation. Failure to make good involves the exaction of the original penalty in addition to the penalty for the new offence which he has committed.

2. Conditional omission of prosecution (Norway), prosecution withheld conditionally, conditional non-prosecution. In these cases the inference seems to be that the judge does not proceed to sentence the offender before giving him a probationary period during which he—the offender—may be tested as to his suitability for such clemency; but perhaps it would not be wise to insist on the *ipsissima verba* of a mere translation. In some countries probation is not available for what are regarded as more serious offences involving penalties of a severe character. Obviously in such cases before putting the offender on probation the question of guilt has to be established, whether the actual conviction be registered or not.

3. The English Probation of Offenders Act 1907 has interesting features when summarised in the semi-tabular form given here.

"Release on probation" signifies that the magistrates find the offender guilty of the offence with which he is charged, but having regard to his :

- (1) (a) character,
- (b) antecedents,
- (c) age,
- (d) health,
- (e) mental condition,

(2) the trivial nature of the offence,

(3) the extenuating circumstances under which the offence was committed,

(4) or that it is expedient to release the offender on probation,

they—the magistrates—may, without proceeding to conviction, make an order :

(a) dismissing the information or charge ; or

(b) discharging the offender conditionally on his entering into a recognisance, etc. etc., i.e. putting him on probation. This refers to minor offences punishable by a court of summary jurisdiction.

Similarly, in the case of more serious offences and for the same reasons the offender may be discharged conditionally, i.e. put on probation.

The interesting points are :

First, it is permissive. A justice asked Dr. Norris not so long ago, "What is probation?" Clearly this justice through ignorance had been depriving offenders in his division of the chance to make good under probationary discipline. But there are other justices who are opposed to the use of probation, and these can justify themselves under the law, if they make no use of it whatsoever. Again, there are those whose faith in probation is so indiscriminating as to induce them to advocate probation for every first offender punishable by their court. For them it is *always* "expedient to release the offender on probation." I am not advocating ignorance, opposition or obsession in so important a matter. I am only drawing attention to the absurdity of a position where a hedge or a ditch may mark the boundary between vastly different methods in the treatment of offenders.

Second, this law advances four reasons for the use of probation. The first deals with the character of the offender; the next two with the character of the offence; in the last the meaning of expediency is not easily interpreted but is sufficiently wide to admit of a very large increase in the use of probation. Concerning the first condition under which offenders may be put on probation, I am constrained to admiration of those who over twenty years ago had the courage and foresight to embody this important provision in the Act. The fact that the character, antecedents, age, health and mental condition may be taken into consideration in deciding whether or not the offender is suitable for probation constituted an important step towards the goal of "the intensive study of the individual delinquent" for the purpose of assessing the treatment necessary in his case. Clearly some kind of investigation became necessary to obtain the required information; but any single item of the five mentioned might furnish a sufficient reason for probationary discipline. The important thing is that the court has to know the result of this investigation before putting an offender on probation. How the making of such an investigation prior to trial squares with our criminal procedure I leave to more competent authorities to say. The Eastern States in America have generally decided that it necessitates two trials and the trend of English practice is in the same direction. In a tour of American juvenile courts I met dozens of cases in which there was a preliminary hearing to establish the guilt or otherwise of the offender, which was adjourned if necessary in order that enquiries might be made ready for a second hearing. Farther west, however, the trials were less formal and the adjournments fewer. That arose from the fact that the court for children was not a punitive institution. I shudder when I think of the misery entailed upon child offenders by what some regard as the legal necessity for such adjournments. Public opinion is ripe for a change in the outlook upon child offenders and in their treatment. When Lord Birkenhead said that it was not so much the offence but the character of the child that was important, he almost hit the mark.

Third, the question of "the trivial character of the offence and the extenuating circumstances" has lost much of its weight in the light of modern science. What is a trivial offence and what are extenuating circumstances? If a

mentally defective child burns a hayrick worth £100 in order to warm somebody's hands, is that a trivial offence? What are the extenuating circumstances? The angry farmer will not think it "trivial" and no amount of punishment inflicted on the budding pyromaniac will satisfy. The purpose of the offence is no extenuation. The character of the offender is the outstanding factor in the case. I ask Lord Birkenhead to delete "so much" from his dictum in the interests of child offenders, and I would ask the farmer to agitate for at least as much supervision over the reproduction of mental defectives as he would demand in the breeding of cattle.

Fourth, the wide discretion given to magistrates by this condition "that it is expedient to release the offender on probation" should encourage them to a more extensive use of this method of trying to convert possible liabilities of the State into assets.

4. With regard to the number of European countries having a probation system, I enumerated on pp. 7-8 the elements of a probation system as envisaged to-day, but it would be a counsel of perfection to expect all European countries to have reached the standards there laid down. Certainly, however, a probation system must carry the implication that as part of the adjudication there must be a probationary period. During that period the offender has to carry out conditions which the court imposes, and has further to commit no offence which will render him chargeable before the court. Should the offender during his term of testing satisfy all these conditions, the punishment to which he originally made himself liable under the law is remitted. Otherwise he is punished for his original offence and the new offence which he may have subsequently committed.

Arising out of the probationary period there is the question of supervision (*liberté surveillée*). It is difficult to see how a court can satisfy itself that a probationer has carried out the conditions laid down in a probation order without some kind of supervision. The common test that the probationer has not been brought to the court on the same or a similar charge during the term of probation would seem to give little or no evidence as to his ability to live as a socially-minded citizen in the future.

In estimating the question whether a country has a

probation system, it has seemed necessary to require as a standard the presence of the two factors for carrying out the adjudication of the court, viz. :

(1) A probationary period in which the offender can make good.

(2) Supervision by a probation officer.

It is further of importance to note that many European law-courts make use of social workers for the probation of offenders. Such workers are the paid or voluntary servants of societies which frequently have a legal status as part of the Ministry of Justice, or as part of the unions of societies, patronages, etc., for the protection of children recognised and often subsidised by their respective Governments. Such social workers I do not hesitate to include as a portion of the probation service, even when a questionnaire may have modestly disclaimed the possession of probation officers.

The court which adjudicates may be :

(a) The ordinary court of law, i.e. for both adults and minors.

(b) The juvenile court presided over by one or more judges dealing with minors up to a specified age.

(c) The *conseils de tutelle*, commissions for juveniles, etc., dealing with juveniles up to a specified age and having the necessary legal powers to enforce their findings.

I have included (c) as a competent court for purposes of this calculation.

Judging by these standards, nineteen European countries utilise probation as a judicial method. They are : Austria, Belgium, Czechoslovakia, Denmark, England and Wales, Finland, France, Germany, Hungary, Ireland (North), Irish Free State, Netherlands, Norway, Poland, Portugal, Russia, Scotland, Sweden, Switzerland.

It is quite probable that I ought to include Spain and Italy in the list, but I have not received conclusive evidence of this up to the present. At any rate, it may be stated that roughly two-thirds of the countries of Europe have a probation system.

## V. PROBATION FOR MINORS AND PROBATION FOR ADULTS

Under the majority of systems provision is made for putting both minors and adults on probation where neces-

sary. In Belgium, France, Germany and Poland probation is definitely confined to minors. There are exceptions in Germany, where probation may be applied to adults as an act of grace by the Ministry of Justice, which in one case has conferred this power on the courts. Curiously, Hungary has a definite probation law for minors, whilst adults seem still to be dealt with under the law of conditional sentence, which in this instance, as in some others, does not seem to demand supervision of the adult offender.

The question of probation for adults as well as for minors raises the important issue as to whether probation should be confined to minors on the ground that adults have reached an age where their characters have become too set for probational treatment to have so good a chance of success. It would be interesting to learn whether the countries confining their efforts in this field to minors are definitely committed to the theory that probation loses its effectiveness after an offender has stepped over the artificial limit of his criminal majority. The Rt. Hon. Winston Churchill, when Home Secretary, said amongst other things that there was "gold in the heart of every man." There can hardly be any dispute that at least in the case of first offenders amongst adults the question of putting them on probation should seriously be raised. The explorations of the officer may reveal stores of precious metal which might be of service to the community, but which are lost in the criminal. The records of probation officers are full of cases where the adult offender has found salvation and a lifelong friend through the ministrations of the apostle of the court.

The chief trouble afflicting the probation service is the fact that so many of those who are called upon to adjudicate themselves act *sans discernement* in putting impossible cases on probation. Such adjudicators may justly excuse themselves on the ground that the special information required concerning possible probationers has not been available. When that is so, they are more likely to bring discredit upon the system than to benefit the offender or society to which he may become a danger.

## VI. PROBATION AND EDUCATION

In his book "Penology in the U.S.A.," Dr. Louis Robinson speaks of probation as being a function of education rather

than of justice. He means that probation is, strictly speaking, an educational service so far as it refers to the reformation of the offender. The problem of the offender is "how to live better," and the purpose of probation is to teach him just that and to get him to do it now in the imperfect world in which he finds himself. What are the processes involved in the reformation of the offender? Dr. Guy G. Fernald has indicated five steps. There is the first, in which the offender is made to realise why the deed he has committed is an offence, why in fact we have laws for governing the community. This is a necessary preliminary to the second stage, in which he feels regret for his offence. Then must follow his determination to do better—the third stage in the upward course. How to translate that determination into social conduct comes fourth and involves planning for future living. Last the critical stage in which the plan is put into operation in social life, at first with and later without, supervision. These are all clearly educational processes involving methods which are part of the professional equipment of the teacher.

To bring about the reformation of a man's conduct is not so easy as teaching him—let us say—the law of gravitation. In the latter the teacher is dealing with something immutable and has pupils suitably prepared to receive instruction. In the case of the former the probation officer deals with the laws of the land, as modified by the views of varying administrators, which change sometimes with bewildering rapidity, quite often, let it be said, for the better. Moreover, the offender is a highly variable quantity with uncharted characteristics of mind and body, requiring individual study and suitable treatment. He is an "escape" from the puericultural garden of the educational service. It is no wonder that we demand from probation officers not only that they should be "professors of conduct," but also that they should have that magnetic personality which draws the best from unpromising material. When I think of the qualifications required to remould an offender's character that he may come to port unspent, I wonder whether supermen and superwomen capable of so magnificent a human service exist.

In fifty years of teaching in the people's schools I have sometimes felt that the child "lives to learn" instead of "learning to live," but ideals have changed during the past

score of years. A real effort is being made to fit children for life in the community, though there are still some who believe that it is enough to teach a child how to earn "a living" and that "how to live" can be left to chance.

But we may perhaps admit that Dr. Robinson's contention is right and that education and probation have similar ideals, the former in moulding human beings for community life, the latter for remoulding those who have failed to adjust themselves in the community, though there will be some divergence in their respective methods.

But however good or bad educational measures may be, they are but the seeds sown which do not ripen immediately or even quickly. England is now reaping the harvest of the educational measures of a generation ago. Concerning that harvest, much might be said showing how many prisons and reformatories have been closed, etc., but that the improvement is substantial emerges from the facts that in 1908 the total number of persons tried before the courts was 757,080 as against 614,713 in 1924, despite the growth in population during this period and the increase in the number of punishable offences, which multiply alarmingly the avenues by which a delinquent may reach the court. It is not claimed that education with its hand-maid probation is the sole factor in causing this marked decline in the delinquency graph, but it is significant that concurrently with the decrease in criminality the use of probation has advanced 100 per cent. In 1908 the total number put on probation was 8,023, or 1.06 per cent. of the total tried before the courts, whilst in 1924 the total was 13,838, or 2.16 per cent. of the total. (Unfortunately I have not the corresponding figures for Europe generally, but the peaks and valleys in the delinquency graph have a habit of following similar trends in most countries, except where there are special reasons for some special divergence.)

There are other factors, of course, which have operated in reducing the sum of criminality during those sixteen years. For instance, there is the general improvement in the amenities of life, the advance in the scientific diagnosis of offenders, and particularly in the increase of facilities for dealing with mental defectives both as to treatment and segregation, whereby the stream of the Jukeses, Kallikaks and Hill-folk is slowly being checked. According to

Dr. Emerick,\* two feeble-minded persons can have only feeble-minded children. . . . from the defective progeny of our present defectives will be recruited in large measure the paupers, prostitutes and criminals of the next generation. . . . Money spent in attacking this problem is a most wise investment, . . . and a niggardly disposition of the matter now will saddle upon the next generation a burden at whose weight we shall be justly reproached."

Whilst legislators have given some piecemeal attention to the problem, the fact remains that little or no legal provision is made to prevent the marriage of the mentally deficient. Such cases call for immediate action in the direction of drastic preventive work—action which is as repugnant to present-day public opinion as it is necessary to human progress and human happiness.

But however much we may feel satisfaction in the achievements of the education service, it would be, in my view, a mistake to endow it with juridical powers, as seems to be the view entertained in certain quarters. Such a position would make the education authority judge, jury, and offender all in one. On the other hand, I contemplate with some anxiety the waste that would ensue if the juridical authority and the education authority should become competitors in the multiplication of specialised educational institutions for dealing with the education or re-education of the criminal, whether for minors or adults. There are several instances of co-operation between the juridical and educational authorities mentioned in the reports of the countries. In Russia the commissions for dealing with children's cases are now removed from the Commissariat of Justice to that of education. In several countries offenders under a specified age must be dealt with by medico-pedagogical methods only, i.e. punitive measures must not be taken against them. In Austria the juvenile court makes use of the school clinics for physical and mental examinations, in spite of the fact that a psychiatrist often sits with the judge at the hearings of the cases. In Denmark the public protection of children is under the Ministry of Health (1927), whilst all the institutions utilised for this purpose are under the supreme control of the Chief Inspector of Public Educational Institutions. Like Austria and Thüringen, English courts have begun to make use of the

\* Quoted pp. 18-19, "Juvenile Delinquency," Dr. H. H. Goddard.

reports and records of educational authorities, and a fairly complete plan of such co-operation exists in Birmingham, London and elsewhere. Co-operation forms a useful bridge over the period elapsing before the establishment of adequate probation departments. I find it difficult to imagine a court, especially a juvenile court, doing adequate justice on the slender information which is submitted in the bulk of cases.

It is still more regrettable that the court should continue to ignore the mass of information accumulated in the records of the Education and Health authorities.

Since the introduction of school medical inspection, most children are the subjects of a careful medical examination, the results of which are entered on a schedule which would materially assist judges in forming an idea of the physical make-up of the child. Further, there are similar schedules giving the mental characteristics of suspected and real cases of mental deficiency. There are, too, the case papers of those who have been in receipt of public assistance of any kind. In these various documents are garnered much information concerning the child and his family. It would seem to be the natural thing in the case of the offending child for these respective documents to be brought to the notice of the court as a matter of course. Seeing, too, that much of the information is technical, a court physician should be requisitioned to interpret them and where necessary to diagnose the case for the assistance of the court, whilst his advice as to treatment would be at the disposal of the officers.

Until some such course has been adopted we shall continue to find punitive courts which birch mental defectives, fine refractory children because of their inheritance from syphilitic parents, or send to prison patients suffering from encephalitis lethargica and others who ought to be sent to hospitals because of their sickness rather than to gaols for their punishment.

In practice, however, the position of the Probation Department is being solved by the tendency to attach it to the court and by placing on this department the duty of investigating and examining offenders on the lines indicated below under "Clinics," and by basing the action of the probation officer on these findings. It will be seen that a good deal has been done in this direction in Europe already, much more in fact than has been supposed.

Whilst probation is a function of Education so far as reformation is concerned, the public is apt to forget that it is also a branch of penology. Probation is a penalty to be inflicted on those whose attitude is anti-social. It is not a means whereby the offender can escape from the results of the wrong he has done to society. It is a judicial guardianship through the intermediary of the court's apostles. It is a close personal relationship which brings to the knowledge of the court all the relevant factors in the offender's life, and reveals to the court the method of treatment which may restore the offender to useful citizenship. As in the case of the treatment of physical ills, it may be painful or otherwise, but it must in the long run rest its claims on the ability of its officers to abate criminality in the community more successfully than any other judicial method has hitherto done.

#### VII. SOME DATES OF PROBATION LAWS

These dates are given for what they are worth and after some hesitation. In most cases probation laws were preceded by a law of conditional sentence and usually some supervision was exercised over those condemned under such sentence. The contributors were probably thinking in terms of effective legislation and not of the earliest date when the principle of probation was first introduced. For example, in England "the Probation of First Offenders Act 1887" preceded the more effective "Probation of Offenders Act 1907" by twenty years. Generally speaking, probation has paved the way for the institution of juvenile courts, but in some instances, as in Belgium and France, the probation and juvenile court laws were included in the same Act.

- 1907. Great Britain (amended 1914 and 1925).
- 1908. Hungary (amended 1913).
- 1910. Russia to 1917 (amended 1918).
- 1911. Portugal (amended 1925).
- 1912. Belgium.
- 1912. France.
- 1915. Netherlands.
- 1918. Spain (amended 1925).
- 1919. Poland.
- 1920. Austria.
- 1923. Germany.

## VIII. PLATFORMS FOR PROBATION OFFICERS

In considering the question of probation it is extremely important that the officers should have their say. The National Probation Association of America and Canada has crystallised the views of its members as follows :

" Probation, properly applied, is a tried and proven method for decreasing crime. By giving the courts the privilege of placing unconfirmed delinquents under the supervision of trained guardians, it substitutes effective guidance for unregulated freedom and prevents the confirming of anti-social trends resulting from unwise imprisonment."

## PLATFORM

" Juvenile courts in each city or county equipped to safeguard every child needing court care. Domestic relations courts, available everywhere, equipped to deal constructively with and prevent desertion, non-support and other family difficulties.

Trained, experienced, adequately salaried probation officers, both men and women, selected for merit and fitness in every court dealing with delinquents.

Clinics for expert mental and physical examination and treatment available to all courts.

Adequate parole supervision for children and adults released from correctional institutions.

State and national organisations and supervision of this work to prevent abuse and to develop the highest standards.

An enlightened public, alert to support every measure to lessen and prevent delinquency."

The above represents the opinion of a great Association numbering some 5,000 members. Its achievements are far-reaching, e.g. the drafting of probation and juvenile court laws for the legislatures of certain States, culminating in the passing of the Federal Probation Law and in the evolution of a standard juvenile court law. The premier Probation Association attains its majority during the present year, 1927, with a wonderful record to its credit and an influence throughout the States that commands the attention of the public.

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The British National Association of Probation Officers is younger and is only at the gateway of adolescence. With

a membership severely restricted under its rules, it has nevertheless been able to take the initiative in obtaining recognition of the official status of the probation officers in the courts, and in the provision of a pension scheme for those grown old in the service.

The following report of a speech taken from the *Bulletin of the National Association of Probation Officers*, February 1925, may give some indication of the writer's views of a British platform for probation officers.

#### PROBATION WORK AS A PROFESSION

Mr. Trought, J.P. (Birmingham), urged the need to regard probation work as a profession on a par with the teaching profession. In a sense every teacher was a probation officer and every probation officer must be a teacher specialising in the problems of behaviour. During the next few years there would be a great work for the probation service, and he hoped the National Association of Probation Officers and the Magistrates' Association, working together, would throw their united efforts into remodelling the juvenile courts, of which probation is the corner stone. A special law was needed for the juvenile courts differing from that of the adult courts, and having treatment as its ideal instead of punishment. All stigma of criminality must be removed. "There are no criminal children, only unfortunate ones." Official language must be simplified and legal jargon unintelligible to children rigidly excluded. Medical and mental clinics must be employed to get at the roots of childish misdoings. Fines and birchings must pass into the limbo of obsolete methods.

What about probation officers themselves? It was up to them to build a great profession, "to set on high the banner of dreams." Their professional platform should include first and foremost "the protection, care, reformation and re-education of the delinquent." Secondly, the work of probation was a profession with all the implications of that term. It involved training and a technique based on scientific principles. It required not only personality—the principal asset—but training on and off the job. He quoted the words of Dr. Selbie :

"Knowledge without love is almost as useless as love without knowledge. Something much more mysterious

and much more powerful is required to change the heart of humanity ; but when love and knowledge go hand in hand you get the great teacher and the good shepherd."

He asked : " Can there be a better definition of a probation officer—the great teacher and the good shepherd ? "

Thirdly, probation was a national service and not the private preserve of any section of the community. As a national service it involved conditions of service, pay and pension adequate to a high calling—one of the highest value to the State.

" The way is long that leads to the land of heart's desire where all our dreams come true." He confidently believed that they would realise their dreams and prayed that it might be soon.

## IX. PROBATION OFFICERS

### I. NAMES

There is considerable variety in the nomenclature of probation officers. Amongst their designations are : probation officer, judge's delegate, curator of children, child-welfare worker, councillor of guardianship, field worker, reporter, enquiring tutor, protective supervisor, social worker, educator investigator, children's social inspector, and trustee for children. (The older term " children's warden or guardian " has now disappeared from use in Russia.) Some of these names emphasise a special aspect of the work, e.g. judge's delegate gives the impression that the judge is responsible for the verdicts he gives and that he has assistants delegated to the task of carrying out his decisions. In the case of the " reporter " stress is laid upon investigation, and the same applies to " field worker." " Enquiring tutor " and " educator investigator " both seem to draw attention to a double aspect, investigation and education, but whilst the names vary, the duties remain much the same.

Roughly speaking, there are two sides to the activities of probation officers : first, their investigations of the conditions of those committed to their charge ; and second, the exceedingly difficult task of reforming and re-educating offenders.

The following modest estimate of the requirements of probation and supervision occurs in " Juvenile Courts at

Work," by Katharine F. Lenroot and Emma O. Lundberg, and is the result of an intensive study of the organisation and methods of ten courts in the States. The study is limited to juvenile courts serving cities of more than 100,000 but less than 1,000,000 population. The investigation contains material obtained so late as 1924, and its findings were approved both by the Department of Labor and the National Probation Association.

## 2. PROBATION AND SUPERVISION (DESIDERATA)

(1) The probation staff should be appointed by the judge from an eligible list secured by competitive examination, subject to approval by a supervising board or commission.

(2) The minimum qualifications of probation officers should be as follows:

(a) Education: Preferably graduation from college or its equivalent, or from a school of social work.

(b) Experience: At least one year in case work under supervision.

(c) Good personality and character; tact, resourcefulness and sympathy.

(3) The compensation of probation officers should be such that the best types of trained service can be secured. The salaries should be comparable with those paid to workers in other fields of social service. Increases should be based on records of service and efficiency.

(4) Not more than fifty cases should be under the supervision of one probation officer at any one time. Officers handling girls' cases should be assigned a smaller number.

(5) If volunteer service is used, the persons performing such service, or the executive organisation of volunteers, should be directly responsible to the court.

(6) Girls' cases should always be assigned to women officers; cases of boys under twelve years may be assigned to women officers, but all cases of boys twelve years of age and over should be assigned to men.

(7) The district system is frequently an economical method of assignment, but fitness of particular officers for special kinds of work must also be taken into account.

(8) A definite plan for constructive work, even though it be tentative, should be made and recorded in each case and should be checked up at least monthly in conference with the chief probation officer or other supervisor.

(9) A general minimum probation period of from six months to one year is desirable, but exceptions should be allowed on recommendations of the supervisor or chief probation officer. The length of probation in each case should be determined by study of the case, needs disclosed and progress made.

(10) Reporting by a child to a probation officer at regular intervals should be required only if it seems clearly to be for the good of the probationer, and should never be made a substitute for more constructive methods of case work. When rightly safeguarded, reporting gives opportunity for acquaintance with the child and free conversation regarding his interests and surroundings and is a means of training in habits of regularity and punctuality.

(11) Regular reporting should usually be limited to delinquent boys over twelve years of age, and they should report at a suitable place away from court and approved by the judge or chief probation officer. Mingling of boys reporting should be avoided through using different days in the week and fixing a certain time for each child to report.

(12) Except in rare cases, home visits at least once every two weeks are essential to effective supervision, knowledge of the assets and liabilities of the family and correction of unfavourable conditions.

(13) In probation work due consideration should be given to language, racial psychology and religion.

(14) Reconstructive work with the family should be undertaken whenever necessary, either by the probation officer himself or in co-operation with other social agencies. Whenever other agencies can meet particular needs, their services should be enlisted. In cases in which two or more agencies are concerned with the same family, frequent conferences are necessary for good teamwork.

(15) Special detailed school reports for each child on probation are advisable. The educational authorities should be requested to co-operate through weekly reports, frequent conferences and other means; but care should be taken to preserve harmony, faith and good-will between the teacher and pupil, the probationer and probation officer.

(16) The probation officer should assist and guide children of working age in the choice of a vocation.

(17) Whether or not an employer should be informed with reference to the child's delinquency depends on the type of employer. Tact and judgment should be used in protecting the interests of both the employer and the child.

(18) Planning for the " spare time " of recreation of probationers is a very important part of a probation officer's functions.

(19) In rural communities it is often desirable and practicable to combine probation work with other types of social service. The form of combination and the division of work will vary according to local conditions and needs. The probation officer, however, should not hold other office in relation to the court, nor an office identified with the prosecution of cases, such as clerk to the court, police officer or sheriff. Reporting of probationers is usually not practicable, and it may be necessary to use volunteer aid to a larger extent than in urban communities. Volunteer workers should be carefully selected and should be under the supervision of a paid officer. Emphasis should be placed on the strict accountability to the court of all officers, paid and unpaid, doing probation work. The officers should be provided with adequate means of transportation.

(20) Supervision of probation officers should be exercised by a State commission or board definitely charged with this duty or by a State supervisory officer. The supervision should be advisory both to officers and courts as to all features of the service, but with power to require the keeping of prescribed records and to compel periodical reports to the supervisory board or officer.

### 3. NOTES ON THE ABOVE DESIDERATA

Every one of these desiderata merits a chapter for its full discussion, but as they all have been "boiled down" from hundreds of previous discussions, and as European officers are in substantial agreement with them, little seems necessary here beyond a consideration of a few of them from the European angle.

(1) So far as the appointment of probation officers is concerned, it would seem that the responsibility of judges or magistrates for the decisions they make—decisions which may be revised by a superior court—carries with it responsibility for the appointment of the probation officers whom they may employ. The preparation of an eligible list secured by competitive examination would, of course, be of assistance to the judges or magistrates in making their selection, but it seems difficult to assess "personality and character" in a competitive list. It is significant that Belgium intends in the future to select probation officers from helpers trained in the schools of social service, which means in effect the use of an "eligible list." England, except in the case of London, recognises the responsibility of the benches of magistrates for the appointment of probation officers. The Home Office reserves the right of confirming the appointments made by the benches. In Austria, Hamburg and Hungary all full-time paid probation officers are "trained." This seems to point to the provision of an "eligible list." In some countries the appointment of probation officers is vested in a State department of those countries.

(2) The vexed question of the professional qualifications of probation officers is comfortably veiled in the second article above. How many discussions have centred round such subjects as "Is probation a profession?" "Should probation officers be graduates of a university?" etc., whilst the duties of probation officers daily become more onerous and exacting, making constantly advancing de-

mands on their intelligence and knowledge of the organisation of communities and their ability to change the heart of offending humanity.

Under "Court Clinics" (below) I have given some account of the questionnaires required for the assistance of the judges in coming to a wise decision in the cases brought before them. Except for the technical findings of medical, psychological, etc., examinations, the probation officer is usually responsible for obtaining the requisite information. This involves the trained ability of the expert social worker. But there is more, he has to understand and interpret not only his own findings but the findings of the technical experts whose services are increasingly requisitioned. Sure that there are causes for delinquency, he has to probe, weigh and decide until he can see light as to his plan of action for combating or removing them often under all the impediments imposed by a mediæval legal system and an imperfect world. Then when his plan has been developed—and not till then—his real work of reformation begins.

So far as the training of European officers is concerned, I am astonished at the facilities provided by various European countries in this matter. I have lively recollections of the keenness displayed by the post-graduate students of New York and Chicago University students, to whom I had in 1925 the pleasure of speaking about social work and education from the English point of view. That European universities are as keenly interested in probation is shown in the returns from the various countries, not only in the provision of courses of study for the officer, but also by their practical assistance to the courts in the examination of offenders. Many universities provide "social study" courses, sometimes with special provision for the needs of probation officers, as in Birmingham. The number of universities which give no facilities in connection with social welfare is almost negligible, whilst the number of schools specialising in that subject reaches large proportions throughout Europe. We may mention in this connection schools, academies, etc., of Austria, Belgium, Czechoslovakia, England and Wales, Finland, Germany, Hungary, Netherlands, etc. Perhaps European universities, though there are exceptions, fail to recognise the needs of a post-graduate course for the medical profession in which the psychological, criminological and psychiatric sides are emphasised. Uni-

versities, in spite of their name, are not charitable institutions, and, until the courts recognise the need of specially trained medical assistants, cannot be expected to provide fortuitous courses for a problematic number of students. Birmingham University quite recently provided such a course, no doubt to be revived later, but the immediate response, though satisfactory, was not sufficient to justify its continuance for the nonce.

Perhaps it is imagining a vain thing to expect every probation officer to be so fully equipped as to be master of all phases of the activities leading up to the regeneration of the offender, but we cannot regard a probation department as adequate unless there are all the facilities and personnel required by modern expert opinion.

If we may consider the Apostles of the early church as forming a great Probation Department, we are struck by the fact that it included a physician, an administrator, an historian, a captain of the fishing industry, working men, and later a man of law, and finally women. We know how large a share healing the sick, casting out devils \* and feeding the hungry formed in the activities of that department.

To-day we have the same elements in the probation departments with certain variations :

- (1) Medical,
- (2) Mental,
- (3) Social,

but interpreted in the light which modern science has thrown upon them.

Mr. W. Clarke Hall, on p. 19 "Children's Courts," says : "It seems to me that the most wonderful phenomenon in the development of modern thought is its continuous approximation to the teaching of Christ."

(3) The remuneration of probation officers does not appear to be expressed in terms of cash except in the English Statutory Rules and Orders (above) ; but the returns from the various countries disclose the following methods :

(a) There are State-paid officers in some cases appointed by the Ministry of Justice or other equivalent authority.

(b) There are officers paid by the municipality, district or communal authority with an *ad hoc* grant

\* Now called psychotherapy.

from the Government in varying ratios, 50 per cent., 66.6 per cent., 70 per cent., according to the country.

(c) There are officers who undertake probation work as a part-time side-line and who are the paid servants of other departments of the State, e.g. public education, health, etc., and who do not receive remuneration from the courts they serve.

(d) There are officers who are the paid servants of the voluntary societies and do not receive remuneration from the courts for their probation services.

(e) The practice of paying a capitation grant of so much per case still persists, but this is now definitely forbidden in England. How is it possible to assess the value of the services rendered by the officer in any particular case?

(f) Out-of-pocket expenses are specified as being paid in the case of some honorary officers.

(g) The great majority of officers serve in an honorary capacity.

In fourteen European countries there are remunerated officers either paid by the State or the municipality (district or commune). In Russia the municipality pays the officers and the voluntary societies lend their paid workers to the court. The Norwegian Aid and Protection League pays probation officers under the sanction of the Ministry of Justice. Almost every European country employs volunteers in probation and parole work. Denmark has a special law under which all citizens of less than sixty years of age may be called upon to undertake social work.

Belgium with its several thousand volunteer probation officers is noteworthy because she feels that probation demands love of humanity in its officers rather than desire of financial reward. The paid staff is, however, definitely selected from those who have previously given service as social workers.

(4) to (12) call for little comment and several of them have already received consideration.

(13) I have sat in an American juvenile court during a morning when every case has called for the services of an officer who acted as interpreter. Such requirements obtain in Europe, though to a less extent.

It is difficult to speak on the question of religious influence

in probation work. I am told that the probation officer's job is to deal with anti-social conduct, not anti-social thinking. But if we agree that conduct, is the result of mental life, the officer's line of action must be to change the probationer's anti-social thinking.

Reformation is a change in the mind of the offender which has convinced him that he has done wrong. It is the probation officer's job to bring about this change, to find new lamps for old, new thought-habits for old, the new man in the old Adam. The glamour of sudden conversion may, and does, often persist, but these moments of exaltation do not always last. The whole warfare against self is not a short, sharp campaign against thought-habits, it is a war of attrition, which becomes increasingly stubborn the later it is deferred.

(14) Home as a unit.

You who cherish courtesy  
With your fellows at your gate  
And around your hearthstone  
Sit under love's decrees. . . .

J. DRINKWATER.

It is common knowledge both amongst probation officers and teachers that the home is the strongest influence in the life of the child. Where children are reared "under love's decrees" coupled with parental wisdom, the number of delinquents is relatively small and such delinquents require very careful probationary exploration. On the other hand, the number of offenders coming from "broken homes" is very high. I have seen it placed as high as 60 per cent.\* The tendency in legislation is to deal with the individual and not with the family, and this is noticeable in probation laws, though there is an exception. I sense the danger which would arise by breaking up the familial unit and so destroying the responsibility of the family for the good conduct of its members. Efforts to promote or revive the "family council," which already exists as an institution, would seem to be helpful in promoting social conduct, especially if a way were found to endow it with a certain amount of authority to call in suitable outside help. Cases have been known where the well-meant efforts of the officer

\* In "Juvenile Courts at Work," p. 236, the number of broken homes in 10,845 children's cases is given as 40 per cent. In "New Goals in Probation," Cooley gives 47.6 per cent. of broken homes in 1,406 adult offenders' cases.

in the reconstruction of a family are resented on legal grounds.

“Un digne foyer familial est le meilleur préservateur contre la criminalité.” Judge de Jongh.

(15) to (20). Expert guidance as to choice of a vocation is now being included in the work of the clinics, and officers will welcome such help as the psychiatrist can afford. As to the duty of finding employment where possible for the unemployed, this is frequently recognised even to the extent of providing a special register in the probation department.

Much more ought to be said about volunteer officers and their services to the community, but there is no available space except to say that they furnish a concrete answer to the question of Cain.

## X. PAROLE

Parole, i.e. conditional liberation of offenders who are undergoing sentences in prisons or reformatories, exists certainly in fifteen countries and probably in several others. It differs from probation in that it is not a part of the original adjudication and is usually decided by a different authority. “Parole” was considered a great achievement in penal reform. Its progress, however, as a method of prevention is being seriously challenged, and yet no intelligent student of penology has any doubt about the principle underlying it, i.e. the principle of the indeterminate sentence. For parole to be successful prisons must be schools for industry and training-grounds for responsible citizenship. Next, the fitness of the prisoner to be released must be determined by those who have sufficient intelligence and expert knowledge to form a judgment; and last, the prisoner when set free must receive suitable supervision, help and encouragement until he is able to fit into his social surroundings. How many of these conditions obtain throughout Europe, or in any other continent for that matter?

There are numerous prisoners' aid associations in Europe and they are doing hopeful work in spite of the unpromising material upon which they work. We know how “use doth breed a habit in a man” and how hard it is for the offender to find the way back. But we must be frank with ourselves.

Both probation and parole as systems must stand or fall by their ability to convert human liabilities of the State into assets and by their success in reducing criminality.

#### XI. PROFESSIONAL ASSOCIATIONS AND NUMBERS OF PROBATION OFFICERS

Since probation is part of the larger service of social work it is natural that probation officers in countries where their numbers are relatively small form part of organised social workers. They meet as officers in conference, but are not organised as separate associations except in seven countries, in one of which (Russia) the Probation Officers' Association has lapsed. The countries with existing separate associations are England, France, Germany, Netherlands, Scotland and Sweden. In Germany and probably Switzerland probation officers are merged or—dare I say it?—submerged in the social workers' societies. The returns from Germany indicate that there are five unions (two of which consist of women social workers), viz. :

Thüringen . . . .	Juvenile prisoners' helpers.
Saxony . . . .	Juvenile prisoners' helpers.
Hamburg . . . .	Women welfare officers.
Prussia . . . .	Professional social workers.
Baden . . . .	Women welfare workers.

Having regard to the history of Associations of Probation Officers, nothing but good can come from their organisation. Whilst their efforts may naturally lead to the securing of satisfactory conditions of service, their principal contribution has hitherto been a substantial improvement in the efficiency of the service, the development of the officers' technique and the clarifying of the principles underlying it.

The number of probation officers in European countries cannot be estimated even approximately. England appears to be the only European country which issues an official list of probation officers. The United States list—also an admirable one—is published by the National Probation Association. The table which follows gives some slight indication of the numerical strength of the probation service in places where figures—mostly approximations—were available.

Country or town.	Population.	Probation officers, paid and voluntary.
Brussels . . . . .	808,000	400 +
Denmark . . . . .	3,300,000	650
England and Wales . . . . .	38,000,000	877
Nivelles . . . . .	180,000	200 +
Prague . . . . .	750,000	500
Russia . . . . .	140,000,000	500
Vienna . . . . .	2,000,000	120 +
	185,038,000	3,247 +

In considering these figures an important factor has to be noted. They include large numbers of voluntary officers. Naturally volunteers—mostly people who have to earn their living in other walks of life—cannot undertake the responsibility of so many cases as regular officers. Belgium, one of the centres of voluntarism, suggests not more than two cases at one time. So that altogether it is a diminutive force to promote worthy living in the community. But it grows in numbers and forms a compact body. Its scope and technique are assimilating and crystallising. Its aims and operations are gradually gaining definition. Moreover it always has in the background the support of the court.

I regard the probation officers and their allies in social work as soldiers. They do not march to tuck of drum; there is no panoply of war. Too often they are called upon to face fearful odds. Their only weapon is the sword—the sword of the spirit, the spirit of brotherliness. They go forth to fight drink, disease, dirt, dope, despair and greed. Like the apostles of old, they are often spitefully used and persecuted. They follow in the footsteps of the greatest probation officer of all time, who came to seek and to save that which was lost, and whose lot was crucifixion.

The way of the probation officer is full of thorns, his public reward is often inadequate; but there is joy in heaven over every one of his successes.

## XII. BOOKS, ARTICLES, ETC., FOR PROBATION OFFICERS

Whilst European literature, so far as it concerns probation, is not so rich as that of America, still, valuable materials for the probation officer are not wanting.

Internationally no book has had so much to do in forming ideals of kindness, sympathy and brotherliness in humanity as the New Testament, and as a book to inculcate the principles of probation I unhesitatingly put it at the head of my list.

When it comes to the question of books and pamphlets dealing specifically with the subject there is this difficulty, that probation is inextricably interwoven with the literature of child welfare and the juvenile courts. This list, which makes no pretence at being exhaustive, is arranged under the countries of origin.

## AUSTRIA

- (a) "Protection de la jeunesse," by Dr. Victor Suchanek. B.I.P.E., April 1925. (In French.)

## BELGIUM

- (a) "The Probation Officer's Guide" ("Le Guide du délégué"), by Judge Paul Wets. Published by Georges Thone, Liège, 1923, 10.50 francs, 156 pp. (In French.) This deals with the history of probation, Belgian legislation relating to the protection of children, notes for officers, practical instruction and advice. The various forms to be used are given in detail, together with a suggested scheme for physiological and psychological examinations and a classification of delinquents.
- (b) *The International Bulletin of Child Welfare* (*Bulletin international de la protection de l'enfance*). Eleven numbers annually, published by l'Association Internationale de la Protection de l'Enfance to its members, who pay 12 belgas per annum. Office, 67, Avenue de la Toison d'Or, Bruxelles. (Now in French.) An invaluable record of all phases of social work throughout the world.
- (c) "Functions and Results of Children's Courts," by Mme la Comtesse Carton de Wiart. B.I.P.E., May 1926. (In French.)
- (d) "Belgian Children's Courts," by Paul Wets. B.I.P.E., May 1926. (In French.)
- (e) "L'Orientation professionnelle," by Dr. J. Maquet, etc. Brussels, 22 rue des Paroissiens, 20 francs, 1923. (In French.)

## CZECHOSLOVAKIA

- (a) A monthly periodical entitled *Juvenile Care*. (In Czech.)
- (b) "Co-opération et prévoyance sociale en Tchécoslovaquie. Klimt . . . , pp. 113-28, inclusive "Protection de la jeunesse," édition Orbis. Prague, 12 Cz. Kr., 1924. (In French.)

## DENMARK

- (a) "Législation sur l'assistance par les conseils de tutelle et sur la surveillance des enfants," etc., par Oluv J. Skjerbæk, Inspecteur en Chef des Maisons d'Education au Danemark. 1 vol., 344 pp., 1926, published by G. F. C. Gads Forlag, Copenhagen, 6.75 Kr. (In Danish.) The exact title is "Lovgivningen om Værgeraadsforsøg og Tilsyn," etc.
- (b) A history by the same author, giving in Danish all the different homes of education in Denmark and much of its child-welfare work, 10 Kr., Office of the Chief Inspector of the Homes of Education, Rosenvsengets Alle, 18, Copenhagen, 1927.

## ENGLAND AND WALES

## OFFICIAL (ALL PRICES NET, POSTAGE EXTRA)

- (a) Probation of Offenders Act 1907, 1½*d.*
- (b) Children Act 1908, 9½*d.*
- (c) Criminal Justice Administration Act, 1914, 4*d.*
- (d) Report on the Training, Appointment and Payment of Probation Officers, 1922 (Cmd. 1601), 6*d.*
- (e) Criminal Justice Act 1925, 9*d.*
- (f) Statutory Rules and Orders 1926,  
No.  $\frac{577}{LI7}$  (see above, pp. 58 *et seq.*), 4*d.*
- (g) Home Office Children's Branch :  
First Report, 1923, 1*s.* 6*d.*  
Second Report, 1924, 1*s.*  
Third Report, 1925, 9*d.*  
No report for 1926.
- (h) Register of Probation Officers, 1926, 1*s.*
- (i) Report of the Departmental Committee on the "Treatment of Young Offenders," 1927 (Cmd. 2831), 2*s.* 6*d.*
- (j) "The English Convict," abridged edition, 1919, 3*s.* net.
- (k) "Psychological Tests of Educable Capacity," Board of Education Report 1924, 2*s.* net.

H.M.  
Stationery  
Office,  
Adastral  
House,  
London,  
W.C.2.

## UNOFFICIAL

- (a) "The Probation System," by Cecil Leeson. P. S. King & Son, London, 1914, 4*s.* net.
- (b) "Co-operation between the Juvenile Courts and Welfare Organisations," by T. W. Trought. Annual Report, A. I. P. E., June 1921 (in French). Also in the "Bulletin" (*k*) below (in English).
- (c) "Some Ways of Improving the Probation Service," T. W. Trought. Portsmouth, 1922.
- (d) "Juvenile Courts as a Factor in Moral Education." Geneva, 1923.

- (e) "Juvenile Probation," J. A. Lovat-Fraser, M.A. State Children's Association, London, 3*d*. (A French translation appeared in the B.I.P.E., November 1925.)
- (f) "Juvenile Delinquents in Great Britain," by Dr. A. H. Norris, M.C. A paper read at the second International Congress on Child Welfare, Brussels, 1921.
- (g) "The Psychology of the Criminal," by Dr. M. Hamblin Smith, Methuen, London, 182 pp., 6s.
- (h) "The Young Delinquent," by Dr. Cyril Burt. University of London Press, 17 Warwick Square, London, E.C.4, 643 pp., 1925, 17s. 6*d*.
- (i) "Children's Courts," by W. Clarke Hall. Allen & Unwin, London, 287 pp., 1926, 7s. 6*d*.
- (j) "Crime Hospitals," by Rankin. City Police Court, Guildhall, Hull, 36 pp., 1s.
- (k) "Bulletin National Association of Probation Officers." Town Hall, Croydon, England.
- (l) Periodicals include (i) *Certified Schools Gazette*, (ii) *The Justice of the Peace*, (iii) *The Magistrate*, (iv) *Seeking and Saving*.
- (m) "The English Prison System," by Sir Evelyn Ruggles-Brise. Macmillan, 7s. 6*d*.
- (n) "Racial Dangers of Mental Defect," by Dr. W. A. Potts, M.A., M.D. Lond. Eugenics Association, 11 Lincoln's Inn Fields, London.
- (o) "Public Social Services." Published by the National Council of Social Service (Incorporated), 33 Bloomsbury Square, London, W.C.1, 102 pp., price 2s. net.
- (p) "Wigram's Justice's Note-book," 10th edition, by J. E. Mitchell, 1923, Stevens & Sons, Ltd., 119-120, Chancery Lane, London, W.C.2.
- (q) "The Justice at Work," by A. Lieck, Butterworth & Co., Bell Yard, Temple Bar, London, E.C., 28 pp., 1922, 2s. 6*d*. net.

(The above is a very short list of available British Welfare publications.)

## FINLAND

- (a) "The Mannerheim League," Mandelin Erik. B.I.P.E., January 1926. (In French.)

## FRANCE

- (a) "Le Tribunal pour enfants," by Dr. Chloe Owings. University of France, 49 Boulevard St. Michel, Paris, 17 francs, 1923. (In French.)
- (b) "Service social de l'enfance en danger moral." Paris 14<sup>e</sup>, 11 Rue Huyghens, 11 pp., Annual Report for 1926. (In French.)
- (c) Supplement to the Children's Code. Imprimerie Administrative, Melun, 1922. (In French.)

## GERMANY

- (a) "An Exemplary Juvenile Court Law," by Elsa v. Liszt, Berlin (see p. 103 *et seq.*). An English translation of her article in the *Soziale Arbeit*, 21 Jahrgang, Wien, November 1923.

- (b) "The Application of the New German Law for Child Protection of 16th February 1923," by Professor Serge Goguel. B.I.P.E., November 1924. (In French.)
- (c) Imperial Law Paper (Reichsgesetzblatt) issued in Berlin, 27th February, 1923, pp. 135-41. Text of the Children's Law. (In German.)
- (d) Gesundheitsbuch. (Health book of school children). Thüringen. (In German.)
- (e) Regulations for Country Houses of Correction. Thüringen. (In German.)
- (f) Intelligence Tests. Binet-Simon-Bobertag. (In German.)
- (g) Memorandum on Protection Supervision (Merkblatt für die Schutzaufsicht). (In German.)
- (h) Collection of Laws for Thüringen: (1) No. 9, 1923. (In German.) (2) No. 4, 1924. (In German.) (Gesetzsammlung für Thüringen.)
- (i) The German Ministry of Justice sends the following helpful note.

"As regards literature on the subject of probation, the books dealing with this subject which can be particularly mentioned are:

(1) 'Probation in a new criminal law,' by P. F. Aschrott, Berlin: Guttentag 1912, 48 pp. 8°.

(2) 'Probation,' by Theodor Geiger, Breslau: Schletter 1919, 110 pp. 8°.

In addition a large number of articles and treatises have recently appeared in newspapers and periodicals among which the monthly reports of the 'Deutschen Reichs-Verbande für Gerichtshilfe, Gefangenen- und Entlassen-fürsorge, Reichsfachverband,' published by Pastor H. Seyfarth in Hamburg, should be specially mentioned."

#### GREECE

- "Children's Courts," by Anna Papadimitriou. 1927. 32 pp. 5 drachmas. (In Greek.)

#### HUNGARY

- (a) "Protection de l'enfance en Hongrie," by Dr. M. Levente Kádár. B.I.P.E., November 1925. (In French.)  
(Also see *Appendix*.)

#### ITALY

- (a) "Rapport établi par Mlle Fanny Dalmazzo" Avocat, à Rome. 19 pp., B.I.P.E., July 1926. (In French.) It deals briefly with the legal aspect of juvenile courts in Belgium, France, England and Spain.

#### NETHERLANDS

- (a) "Homes for Semi-liberty," by Judge G. T. J. de Jongh, Kinderrechter, Amsterdam. (In English, also in Dutch.)
- (b) "La législation de l'enfance aux Pays-Bas," by G. T. J. de Jongh. B.I.P.E., April 1925. (In French.)

- (c) "Jaarboek voor de reclasseering van volwassenen en kinderen." Tweede jaargang, verschenen 1925. Samengesteld door het Genootschap tot Z. V. der Gevangenen in samenwerking met het Ned. Verbond der Vereenigingen Pro Juventute. Prijs f 1.05. Derde Jaargang verschenen Maart 1926. Prijs f. 1.15. (In Dutch.)
- (d) "Van zedelijke verbetering tot reclasseering," door Mr. J. M. van Bemmelen. Prijs ing. f. 5.60, geb. f. 7.50. (In Dutch.)
- (e) "Uit den strijd tegen de misdaad," door Mr. G. T. J. de Jongh. Prijs ingenaaid f 0.55. In band f 1.05. (In Dutch.)
- (f) "De reclasseering van strafrechtelijk meerderjarigen in Nederland," door Mr. J. Overwater. Prijs f 6.50. (In Dutch.)
- (g) "Jaarverslag van het Genootschap tot Zed. Verb. der Gevangenen over 1922 en over 1923." Prijs f 0.25 per stuk. (In Dutch.)
- (h) "De resultaten der gezinsverpleging van misdadige kinderen," door Pro Juventute Rotterdam 1899-1923, door G. A. M. de Bruyn, f 0.60. (In Dutch.)

## NORWAY

- (a) "Norwegian Care-taking Societies," by Conrad Falsen. Published by Fabritius and Sonner, Kristiania, 15 pp. See p. 128 *et seq.* (In English.)
- (b) "Regler." Published by the Norwegian Department of Justice, 26th January 1923. (In Norse.)
- (c) "Lover for Norges Forsorgs-og Verneforbund." 7 pp. (In Norse.)
- (d) "De Norske Forsorgsforeningers landsforbund 3<sup>de</sup> Beretning," 20th September, 30th June 1920. (In Norse.)

## POLAND

- (a) Dr. Alexandre Mogilnicki's draft Juvenile Court Law for Poland. B.I.P.E. (In French.)  
The Ministry of Justice of Poland with the greatest courtesy sends what appears to be a complete bibliography of 30 books, etc., on juridical child welfare. The following is a selection of the more recent :
- (b) Krzymuski, E. "Juveniles before the penal court." Krakow 1916. ("Wiek mlodzieńczy przed sadem karnym," Krakow 1916).
- (c) Kuncewicz, G. Poland, "The protection of orphans in general and of war orphans in particular." Second international congress for the protection of children, Brussels 1921, Book II, p. 504. (Pologne, "La protection des orphelins en général et des orphelins de guerre en particulier." Deuxième Congrès International de la protection de l'enfance, Bruxelles. 1921, Tome II, p. 504).
- (d) Lindbergowa Róza. "Juvenile courts," Warsaw, 1912. ("Sady dla nieletnick," Warszawa, 1912.)

- (e) Mogilnicky, Al., Prof. Dr. "Child and offence," Warsaw, II edition 1925, published by M. Arct, bookseller in Warsaw, 426 pp., price Zloty 14. ("Dziecko a przestepstwo." Warszawa II wyd. 1925, nakladem Ksiegarni M. Arcta w Warszawie, str. 426, cena 14 zlotych.)
- (f) By the same author. "Protective juvenile legislation in Poland." Brussels 1921. (La législation protectrice de l'enfance en Pologne," Bruxelles, 1921.)
- (g) Reinhold, J. "Plan of a statute for juvenile offenders." Krakow 1919. ("Projekt ustawy o mlodocianych przestepcach," Kraków, 1919.)
- (h) "The protection of children in the Kingdom of Poland." Statement presented at the International Congress for the protection of children, Warsaw, 1913. ("La protection de l'enfance dans le Royaume de Pologne." Rapport présenté au Congrès International pour la protection de l'enfance. Varsovie, 1913.)
- (i) "Plan of a statute for juvenile courts made by the Polish Commission of Codification." A French translation of the said statute is given in the magazine "Przegląd Polskiego Ustawodawstwa Cywilnego i Karnego," Warsaw, 1922, book I. ("Projekt ustawy o sadach nieletnich, opracowany przez Komisje Kodyfikacyjna Rzeczypospolitej Polskiej." Przekład francuski tego projektu w zalaczeniu do "Przeglądu Polskiego Ustawodawstwa Cywilnego i Karnego.")

## PORTUGAL

- (a) Documents officiels. Ministère de la Justice et des Cultes. B.I.P.E., November 1925. (In French.)
- (b) "Functions and Results of Children's Courts," by Augusto d'Oliveira. B.I.P.E., June 1926. (In French.)

## RUSSIA

- (a) "The Struggle against Juvenile Criminality," by P. Lublinsky. B.I.P.E., March 1925. (In French.) See p. 157 *et seq.*
- (b) "Juvenile Delinquency." B.I.P.E., February 1925. (In French.)
- (c) Russian Penal Code. 22nd November 1926. (In Russian.)
- (d) Guide to the Juridical-medical Examinations, compiled by Dr. Leibovitch, People's Commissariat of Health. Moscow 1926. (In Russian.)
- (e) *Judicial-medical Journal*. (Same publishers.) (In Russian.)
- (f) "Problems of Criminality," State publishers, Moscow, 1926.
- (g) "The Situation of the Child in Soviet Russia," by Diatéls. Pp. 65-67. B.I.P.E., January 1927. (In French.)
- (h) "The Protection of Children morally Abandoned and Criminal in Russia," etc., by Professor Serge Goguel, pp. 143-168, B.I.P.E., February 1927. (In French.)
- (i) "A Separate Court for Minors' Cases," by Nikolas A. Okooneff. The Assembly J.P., Petersburg, 1911. 190 pp. 1 rouble. (In Russian.)

## SPAIN

- (a) "Juvenile Courts of Barcelona," by Ramón Abbó y Martí ("Los tribunales para niños"). Barcelona 1922, 12s. 6d. (In Spanish.)
- (b) Rapport établi par Carmen Isabel Galceran "Functioning and Results of Juvenile Courts in Spain." B.I.P.E., September 1926. (In French.)

## SWEDEN

- (a) "Swedish Probation System," by Judge Harald Salomon. (In English.) See pp. 168-169.
- (b) "Den Villkorliga domen en straffrättslig undersökning," by Folke P. son Wetter, Professor at the University of Uppsala. Almqvist and Wicksells Boktryckeri A.B. at Uppsala, 1912, 170 pp., 3 Swedish crowns. (No English translation.)

## SWITZERLAND

- (a) "Apropos of Child and Adolescent Welfare," by Dr. Gengou. B.I.P.E., September 1926. (In French.)

## TURKEY

- (a) "The Society for Child Welfare." B.I.P.E., April 1926. (In French.)

Naturally the serious student will desire access to the various codes of law in order to become acquainted with the possibilities of the probation system existing in the respective countries. In a number of cases relevant portions of the codes of several European countries have been translated specially for this book. Further codes are available by a perusal of the files of the B.I.P.E.

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Probation officers will find much stimulating information in the following American works which are listed without any attempt to be exhaustive and for no other reason than because they happened to come my way.

- (a) "A Friend at Court," by Elizabeth and Leon Stern. Macmillan Co., New York, 1923, \$2. Probation work at Philadelphia put into the form of a novel.
- (b) "Development of Probation," by Chas. L. Chute. Russell Sage Foundation pamphlet.
- (c) "Proceedings of the National Probation Association." \$1 per annum, 370 Seventh Avenue, New York City. In the present year, 1927, the National Probation Association of America reaches its majority. The volumes of the "Annual Proceedings" form a concrete history of the rise and growth of the

probation movement, and in the pages of its numbers the spirit and life-blood of the pioneers of probation are consecrated.

- (d) *Probation Bulletin*. Bi-monthly, 50 c. per annum. Address as in (c).
- (e) "Directory of Probation Officers." 50 c. Address as in (c).
- (f) "Manual for Probation Officers in New York State." New York State Probation Commission, Albany.
- (g) "State Supervision of Probation," by Charles L. Chute. Address as in (c).
- (h) "Minimum standards of Probation," by Herbert C. Parsons. Boston, Mass.
- (i) "Probation Manual," Massachusetts Commission on Probation, Boston, Mass.
- (j) "Juvenile Delinquency," by H. H. Goddard, 1921. Kegan Paul, Trench, Trübner & Co., Ltd., 68-74 Carter Lane, London, E.C.4, 120 pp., \$1.50.
- (k) "The Revolt of Modern Youth," by Judge Ben B. Lindsey and Evans. Boni & Liveright, New York, 1925, \$3.
- (l) "Youth in Conflict," by Dr. Miriam Van Waters, 1924. Republic Publishing Co., New York, 291 pp., \$1.
- (m) "Juvenile Courts at Work." Children's Bureau, Washington, D.C., Publication No. 141, 323 pp., 45 c.
- (n) "'Penology' in the U.S.," by Louis Robinson. 1921, 335 pp., \$3.
- (o) "Case Studies," by Healy and Bronner. 20 pamphlets, Judge Baker Foundation, Boston, Mass., \$2.50.
- (p) "The Individual Delinquent," by Healy. 839 pp., \$5.
- (q) "Measurement of Intelligence," by Terman. 1916. 362 pp., \$2.10.
- (r) "The Child, his Nature and Needs." The Children's Foundation, Valparaiso, Indiana, U.S.A., 1924, 516 pp., \$1.
- (s) "The Riddle of Society," by Dr. Charles Platt, President National Probation Association. 370 Seventh Avenue, New York City, 306 pp., \$2.
- (t) Reports of Courts and Chief Probation Officers, etc.
  - (i) Chicago, Cook County, Juvenile Court.
  - (ii) Philadelphia Municipal Court (particularly 1919).
  - (iii) The Children's Association at Buffalo, under Mr. Douglas P. Falconer.
  - (iv) Sleighton Farm, Darling, Pa., of which Mrs. Martha P. Falconer, "beloved builder of a new ideal in reformatory work," was the founder.
- (u)
  - (i) The Probation Officer of 1915 and 1925," by Mary Edna McChristie, Referee, Court of Domestic Relations, Cincinnati, Ohio.
  - (ii) "Psychology and Probation," by Dr. Charles Platt.
  - (iii) "Probation in Europe," by T. W. Trought.
  - (iv) "The Rate of Progress," by Dr. G. W. Kirchwey.
  - (v) "A standard Juvenile Court Law."
  - (vi) "The Application of the New Federal Probation Law," and the text of this law.

All six of these appear in "The Proceedings of the National Probation Association" at Denver, Col., 1925, 370 Seventh Avenue, New York City, \$1.

(v) The publications of the Commonwealth Fund Programme.

This series, issued by the "Joint Committee on Methods of Preventing Delinquency," is probably the most important contribution to the subject of the prevention of crime yet issued. The purpose of this long-sighted propaganda is set out as follows:

(i) To develop the psychiatric study of difficult, pre-delinquent, and delinquent children in the schools and juvenile courts; to develop sound methods of treatment based on such study; and to provide courses of training along sound lines for those qualified and desiring to work in this field.

(ii) To demonstrate in a number of widely scattered cities the value of such psychiatric study and treatment applied to children of this sort, referred from juvenile courts, schools and other agencies.

(iii) To develop the work of the visiting teacher, whereby the invaluable early contacts which our school systems make possible with every child may be utilised for the understanding and development of the child.

(iv) To extend by various educational efforts the knowledge and use of these methods.

With these objects in view a number of illuminating books have been published, among which may be mentioned:

1. "The Commonwealth Fund Program for the Prevention of Delinquency." 16 pp., free on request.
2. "Three Problem Children." Narratives from a child-guidance clinic. 146 pp., \$1.
3. "Some Extra-Curricular Problems of the Class-room," by Bernard Glueck, M.D. 16 pp., free on request.
4. "The Problem Child in School." Narratives from case records of visiting teachers by Mary B. Sayles. With a statement on the purpose and scope of visiting teacher work by Howard W. Nudd. 288 pp., \$1.
5. "The Visiting Teacher in Rochester." Report of a study by Mabel Brown Ellis. 206 pp., 75 c.
6. Progress Report. 48 pp., free on request.
7. "The Understanding and Guidance of the Problem Child," by Graham R. Taylor.

The co-operation between the school and the home by means of the visiting teacher who is also a psychiatrist seems a hopeful method of dealing with the maladjustment of the individual scholar before he reaches the court. When this method has been extended to cover the pre-school age, the advantages of clinical diagnosis will be available to every parent who is harassed by a "difficult" child. The value of the movement is witnessed by the tremendous

expansion in the number of visiting teachers and of child-guidance clinics resulting from its efforts.

Probation officers seeking information should apply to: Mr. Graham Romeyn Taylor, Director, Joint Committee for the Prevention of Delinquency, 50 East Forty-second Street, New York City.

### XIII. JUVENILE COURTS

*Miss Jones to her Pupil:* "Why are you looking so proud this morning, Tommy?"

*Tommy:* "You'd be proud too, if you was wearing a weskit made out of your daddy's trousis!"

Many a boy feels a sense of pride in being singled out for the attention of the court, and afterwards, in the presence of his schoolmates, he will remember with advantages what feats he did that day. Young offenders fourteen to sixteen years of age, we learn, may suffer half the penalties inflicted upon adults for the same offence. Those sixteen to eighteen years, two-thirds. There you have it! The legal pants of the parent are cut down to fit Tommy's requirements. Of course the cutting-down process involved difficulties in connection with the death-penalty, but law makers were equal to the occasion! They abrogated the death-sentence within certain infantile age limits. I ask legislators two simple questions: "Do you know that children and youthful persons are different physically and mentally from adults?" "If you do, why don't you provide them with a new legal suit differing from their father's?"

Take the following instance from a juvenile court hearing. Three boys of from ten to thirteen years of age were charged before the court. One of them was feeble-minded, one a border-line case and the third a bright, mischievous lad. I give a portion of the hearing.

The sergeant of police in the witness-box said, amongst other things, "I swear by Almighty God that the evidence I shall give shall be the truth, the whole truth and nothing but the truth. . . . I received the defendants into custody and charged them with being on enclosed premises with intent to commit a felony. . . . The third boy said, 'That's right; I wanted some money'."

The clerk said, "Now, boys, you have heard what the sergeant said. Do you wish to ask him any questions?" They did not. In the absence of the parents, the clerk further asked, "Do you wish to be tried summarily by the magistrates to-day, or by a jury at the quarter-sessions?" After hearing the evidence he continued, "You boys are charged with being on enclosed premises with intent to commit a felony. Are you guilty, or not guilty, of the charge?"

The feeble-minded boy replied, "No." The border-line boy replied, "No, yes." The mischievous young rip replied, "That's right! I wanted some money."

I admit that the language and procedure of the court are intelligible to lawyers and students of mediæval English, but I contend that the above language falls on infant ears as so much babble. It is reminiscent of the ritual and barbarous incantations wherewith witch and wizard sought to impress their victims in bygone ages. It often results in breeding fear in the child's mind, and fear is the father of lies. In such cases Tommy is wearing his father's legal pants without any attempt to cut them down to measure.

Consider the following charges: "You are charged with being found wandering and having no parent or guardian"; or again, "You are charged with being found wandering and having a parent or guardian who does not exercise proper guardianship,"; or again, "You are charged with frequenting the company of a reputed thief, or of a common or reputed prostitute," as the case may be. (In the latter case, however, if the prostitute is his mother and exercises proper care and due guardianship to protect him from contamination, then he may be held to be "not guilty.")

It is the anomalous character of the charges that strikes the attention. It would be but little more extravagant to charge the offender with being "found wandering and having made an indiscreet choice of parents."

No doubt this singular formulation of offences has a laudable object, viz. the protection of children. The explanation of the roundabout charges seems to be that it is a vain attempt to satisfy criminal procedure. It is really an attempt to adapt new ideals to old procedure, to put new wine into old bottles.

From a realisation of the absurdities to which I have referred the practice of holding informal hearings prior to the trial is rapidly growing in favour both in Europe and America.

Children are nearer to Jesus Christ than most of us, but they cannot be expected to stand up for themselves in the temples of the law hearing and asking questions. During an informal hearing children understand more easily and speak more freely and often with a truth that is devastating.

My complaint is not directed towards any particular country or countries. My contention is that a criminal system hampers the use of probation and inflicts injustice on those least able to defend themselves. Happily, practice is always ahead of the law. Even in countries with no juvenile court law, strict legality is often more honoured in the breach than in the observance. Administratively separate hearings for children's cases are effected, a specialised judge, often the president, emulates the sympathetic father rather than the justice with eyes severe, and deviates from the language of the court into that of the fireside.

Juvenile court penalties, it is true, improve on older methods. The child is no longer put on the mountain-side to perish, nor is he hanged,\* but we are yet a long way from recognising that "the best preparation for a happy life is a happy childhood." Some adjudicators still believe that the reformation of the young offender may be effected by fining his parents; that his brain may function properly in regard to conduct if we irritate his epidermis; that he will grow virtuous in gaol at the cost of the community.

The futility of trying to assess offences in terms of cash long ago incurred Gilbertian ridicule. The practice of whippings is fast disappearing from the armoury of legal weapons—unwept as the stocks and the ducking-stool. It hardly seems consonant with the dignity of a court to order a child to receive a number of strokes with the birch rod, even though the rod and the stool are of the approved size and style. It is being recognised to-day that both the schools and the precincts of the courts "look better when decked with flowers, than with bloody birchen boughs." †

\* No murderer under eighteen years of age has been hanged in England during the past forty years.

† Montaigne.

But the real reason for its gradual disuse is the fact that whipped child offenders come back to the court for new offences relatively more quickly and more often than those dealt with in any other fashion.

As to the penalty of imprisonment marked repugnance is everywhere shown nowadays to its use in dealing with juveniles, though it still persists, in rare instances without their adequate separation from adult criminals. Nearly eighty years ago three English judges told us that the ideas underlying imprisonment and reformation were "contradictory and irreconcilable."\* Lord Hewart with characteristic caution said at the Prison Congress, 1925: "There were few more effectual ways of manufacturing criminals than to send young offenders unnecessarily to prison." The same thought has been expressed but with less reserve, "To send a kid to gaol is to make him toboggan straight to hell." Quite a number of European countries refer young offenders below a specified age for treatment by medico-pedagogic methods, thus ruling out the possibility of a prison sentence. In the more modern jurisdictions for juveniles, whence repressive measures have been banished, the idea of sending a child to prison is regarded with horror.

We have grown accustomed to look upon American juvenile courts as exemplars of the latest thought in this field. Several European countries have rightly acknowledged their indebtedness to American—and less frequently to Anglo-Saxon—methods of jurisprudence for juveniles. It is interesting therefore to know how far Americans themselves are satisfied with their achievement. So late as 1922 Flexner and Oppenheimer tell us in "The Legal Aspects of the Juvenile Court":

- that in ten or twelve States in the U.S.A. juvenile-court cases are heard by police judges or justices of the peace;
- that the training of police judges and magistrates does not, as a rule, equip them to deal with children's cases;
- that provisions of this sort are a survival of the idea that children's cases can be treated merely as breaches of the peace;
- that a few States disregard the purpose of the juvenile court so far as to give jurisdiction over children's cases to criminal courts.

Mr. Flexner, I believe, recognises that even in the land

\* "The English Prison System," Sir Evelyn Ruggles-Brise. Macmillan. 7s. 6d. net.

which pioneered the movement much remains to be done and that their juvenile courts remind us of Jeremy's figs.

It has been generally agreed that the attempt to graft a new jurisdiction for juvenile cases upon existing legislation for adults is doomed to failure. Sooner or later a new type of jurisdiction has to be evolved. The nature of this new type is shown in several of the following instances.

### I. CHICAGO

Under a law passed in 1899 "to regulate the treatment and control of dependent, neglected and delinquent children," a delinquent child was recognised as a "ward of the State" needing protection, and not as a criminal.

The Act provided for:

- (a) A separate court for children's cases.
- (b) A separate place of detention for children.
- (c) The abolition of fines and imprisonment.
- (d) The return of a child to his home on probation.
- (e) Probation officers to supervise the child at home.
- (f) The recognition of the family as the starting-point of diagnosis and treatment of the case of the child.

In 1905 the juvenile court law was amended so that the courts were able to deal with the case of boys up to the age of seventeen and girls up to the age of eighteen years.

### 2. PHILADELPHIA

The purpose of the juvenile courts is stated in the preamble to the Juvenile Court Act, 23rd April 1903.

"The fundamental purpose of juvenile court procedure in delinquency cases is not to determine whether the child has committed a specific offense for which punishment must be inflicted, but to discover whether he is a subject for special protection, care and guardianship, by the community in the same degree as the child who is neglected or homeless.

"Since the juvenile offender is not considered a criminal, but a child in need of protection, it is essential that legal evidence be accompanied by social, medical and mental facts concerning the offender."

These powers are, moreover, clearly distinguished from the powers exercised in the administration of the criminal law.

## 3. BELGIUM

The law of the 15th May 1912 so far as it concerns minors brought before the court has principally for objects, "the creation of a special jurisdiction for children and the substitution of measures of guardianship, education and protection in place of the pains and penalties provided by the Penal Code and repressive legislation."

## 4. GERMANY

Children's Law, 16th February 1923. The Reichstag has enacted the following law which we publish here with the consent of the Reichsrat (Imperial Council).

Section 1, par. 1.—By youthful person in this law is meant one who is over fourteen years of age but has not yet reached the age of eighteen years.

Par. 2.—The child under fourteen years of age who commits an act for which a penalty may be inflicted is not punishable.

Par. 3.—The youthful person (i.e. fourteen to eighteen years) who has committed an act for which a penalty may be inflicted is not punishable if at the time of committing the act he was, owing to his mental and moral development, unfit to understand the illegality of his act or to determine his will conformably with this understanding.

Par. 4.—Par. 2 and par. 3 (above) do not concern the punishableness of the "instigator" . . . "receiver."

Par. 5.—If a youthful person has committed a punishable act, the court must decide whether educational methods are necessary. If the court considers educational methods necessary, it must either order the educational measures itself, or else declare the necessity of educational methods and leave the choice and arrangement of them to the *Vormundschaftsgericht* (i.e. court for the protection of wards).

Par. 6.—Should the court consider educational measures sufficient, the penalty is not inflicted.

Par. 7 gives the list of admissible educational measures including probation. This list can be extended with the consent of the Reichsrat. Such measures may be carried out after the eighteenth year up to the beginning of the majority.

Par. 9 states the reduction of the amount of punishment in the case of youthful persons as compared with the punishment which may be inflicted on adults for the same offence. The death-sentence must not be inflicted.

(Then follow laws governing probation, juvenile courts, etc.)

Here it appears that up to the age of fourteen children are not punishable by the court and that between fourteen

and eighteen years children may be dealt with by educational measures or by punishment as the court may decide.

#### 5. NETHERLANDS

Judge G. T. J. de Jongh says: "We do not think in terms of punishment for those under eighteen years of age, but exclusively in terms of their education."

#### 6. SPAIN

The fundamental principle is that under sixteen years of age "the child is to be educated or re-educated, not punished."

#### 7. DOMESTIC RELATIONS COURTS

Up to the present amongst European Courts I have found no example of the family and domestic relations court first inaugurated in Denver, Colorado, by Judge Lindsey, the doyen of children's judges. This court has under its jurisdiction all cases arising from troubled family relations, and one department of it deals with juveniles.

The completeness of the Denver Court will be recognised from the fact that it had jurisdiction in divorce cases, non-support and desertion, failure to provide for wife and child, all delinquency and dependency cases. Further, it has concurrent jurisdiction of any child under twenty-one and over twenty-one where the offence is against a person under twenty-one, even though it be murder. It has exclusive jurisdiction in all adoption cases of minors. At the request of Judge Lindsey divorce cases were removed from the juvenile court, but it retains the power of settlement of the custody of children. Judge Lindsey has a remarkable personality and is a fearless fighter on behalf of child and youth, sometimes against fearful odds.

#### 8. JUVENILE COURT STANDARDS

American probation officers have drawn up what they believe to be the guiding principles under which the juvenile court should function, and these are embodied in "A standard juvenile court law" ("Proceedings," National Probation Association, 1925). These standards are summarised as follows:

(a) Broadly speaking, the court dealing with children should have a wide jurisdiction embracing all classes of cases in which a child is in need of the protection of the State, whether the legal action is in the name of the child or of an adult who fails in his obligations towards the child.

(b) The court should have a scientific understanding of each child.

(c) Treatment should be adapted to individual needs.

(d) There should be a presumption in favour of keeping the child in his own home and his own community, except when adequate investigation shows this not to be in the best interests of the child.

### 9. COMPETENCY

The competency of European juvenile courts to deal with offences varies according to the country both as regards children and adults, and also as to offences. There is a wide divergence between those courts (a) which deal only with offenders and children living under immoral surroundings, and those (b) which deal with offenders, children living under immoral surroundings, neglected, dependent, mentally defective, abandoned, adopted, unmanageable and illegitimate children. A number of courts also deal with cases under *correction paternelle*.

Then there is their competency to deal with adults for certain offences (1) contributing to a child's delinquency, (2) committing offences against children, (3) desertion, failing to maintain. Certain courts also can deprive parents or guardians of their parental or guardianship rights.

There seems to be no logical basis for the classification of European courts. Each nation has developed along its own lines.

The question whether such cases as dependency, neglect, mental defectives, etc., should be brought before the court irrespective of being offenders is an interesting one. Their inclusion undoubtedly changes the outlook of the juvenile court from that of a judicial body to that of a welfare body or, at any rate, mitigates the judicial and emphasises the welfare side. A gradual change in attitude towards the delinquent is fostered by his appearance amongst the neglected, etc. Instead of being looked upon as a diminutive criminal, he is thought to be the victim of a bad environment, pre-natal and post-natal. There are still many who concentrate their attention upon the crime rather than upon the criminal, but for better or worse there is a clearly marked movement throughout Europe—indeed throughout the world—towards humanising justice in the juvenile courts, towards making an intensive study of the individual delinquent in order to get at the causes of his maladjustment in the community, to remove the causes and re-educate him

for social living. Everywhere the jurisdiction of children's courts is being extended so as to deal with the handicaps under which children labour. Everywhere the ages of so-called criminal responsibility are being raised, and departments for the protection of children legalised in the Ministries of Justice.

#### IO. PUBLIC DEFENDER

The office of public defender is an old one, dating back to the Middle Ages. In the fifteenth century Spain had an "advocate for the poor." In France there is "l'assistance judiciaire" for the defence of indigent persons. A Norwegian Act of 1902 provides that a lawyer must be assigned by the court to defend any criminal at the expense of the State. In England provision may be made for the defence of an accused person, whilst the voluntary institution of the "poor man's lawyer" is well known and widespread. Apparently Denmark appoints both a prosecutor and defender for the accused person. The office of public defender has spread to America.

In the case of juvenile offenders Europe furnishes many examples of the application of this principle, notably in Austria, France, Czechoslovakia, etc., where the judge appoints in each case a defender charged with the duty of safeguarding the interests of the offending child. But many authorities look with doubt on the introduction of the legal advocate into children's courts. It is apt to introduce elements of discord in a place where the attitude of the court should be that of a wise and business-like home.

#### II. COMMISSIONS, OR CONSEILS DE TUTELLE

It would be difficult to exaggerate the importance of the work done by the *Conseils de tutelle* in Europe. Their statutory composition and legal powers added to a wide use of volunteer service make for an economical system of government of children.

For a description of an actual hearing in a Russian children's commission see No. 165 "Prager Tagblatt," 13th July, 1927, where the eye-witness draws attention to the informality and conversational character of the proceedings.

It is claimed that the system avoids the stigma which is said to be attached to the child against whom proceedings in a court of law have been taken. On the other hand, the Portuguese decree regards the retention of committees merely as a necessity arising out of the present monetary stringency which prevents the community from augmenting the personnel of the public service by an army of children's judges.

Probably the chief objections which may be urged against the scheme of *conseils* is that continuity of policy must be difficult to maintain even with a secretary paid out of public funds, as is often the case. Further, it is not so easy to fasten responsibility upon a committee as it is upon the children's judge. The outstanding value of the *conseils* is that they bring home to the population the fact that misconduct is not only the concern of a few judges and other court officials, but also that it is everybody's concern. They foster public interest in maintaining a high standard of conduct.

It is noteworthy that *conseils* sometimes exist side by side with a children's court having a judge, as in Belgium, Austria, etc. Such an arrangement has much to commend it, even though it may entail some loss of legal standing to the *conseils*. The existence of such a committee attached to every court strengthens the efficiency of the court, as experience has already shown, and provides a medium for bringing all the forces of welfare work into line for the benefit of the badly adjusted child. On the other hand, M. Collard Sloovere, of Brussels, reminds us that it is the individuality, the paternal care, personal relationship, informal character of the children's judge which gains the confidence of the offender. "On confesse ses péchés à un seul et non à une assemblée." Generally practice tends towards the appointment of a children's judge responsible for all children under his jurisdiction. He gathers to his aid the welfare organisations and their helpers and gradually the community is brought to a recognition of the fact that every criminal is a reflection on the good government of the community.

## 12. JUVENILE COURT RECORDS

1. Every court should have a record system which provides for :
  - (a) The filing of the necessary legal records,

- (b) The filing of social records covering the investigation of the case, the study of the child, and the work done by the officers of the court and the probation staff. These social records should be deemed privileged and confidential records of the court and should be at all times safeguarded from indiscriminate public inspection.
2. The filing system should be such as to permit ready identification of cases.
  3. The records of the social investigation and the study of the child should include all the facts necessary to a constructive plan of treatment.
  4. The records of supervision should show the constructive case work planned, attempted, and accomplished, and should give a chronological history of the supervisory work.
  5. The court should compile annually statistical information which will show the problems dealt with and the results.
  6. In order that it may be possible to compile information covering a period of years and to compare the work of one court with that of others it is essential that uniform terminology and methods of statistical tabulation and presentation of fundamental items be agreed upon. By this means only can significant social data concerning the prevention and treatment of juvenile delinquency and neglect be obtained.

### 13. EUROPEAN COURTS

The records accumulated here show that fifteen out of twenty-nine countries in Europe have, or have had, juvenile courts during the present century. Russia has replaced juvenile courts by commissions or *conseils*. Germany, Holland and Spain had juvenile courts prior to the passing of their more recent special Acts. These countries are :

Austria, Belgium, Czechoslovakia (former Hungarian territory), England and Wales, France, Germany, Hungary, Ireland North, Irish Free State, Netherlands, Poland, Portugal, Russia, Scotland, Spain.

The date of the first juvenile court in Europe is that of the Netherlands, 11th February 1901; next comes Great Britain and Ireland, 1908; followed by Russia, Portugal, Belgium, France, in the order given.

I learn that new juvenile court laws are either already drafted, or are well on the way, though not yet enacted, in the following countries :

Bulgaria, Czechoslovakia, Denmark, Finland, Greece, Poland, Rumania and Yugoslavia,

and that in at least three of these juridical child welfare has already made considerable progress.

#### XIV. COURT CLINICS

Canst thou not minister to a mind diseas'd ;  
Pluck from the memory a rooted sorrow ;  
Raze out the written troubles of the brain ?

*Macbeth*, Act V, scene 3.

How far the scientific diagnosis and treatment of criminals has advanced is a matter for the scientist. Like other magistrates, I have to be guided by findings of the research department. Dr. Cyril Burt, in "The Young Delinquent," has outlined his views on the court clinic from the British angle, and I would refer new students to this work. Perhaps, however, it may be of interest to set out for laymen some of the steps by which I, as a layman, have reached the conclusion that the most hopeful way of attacking the problem of delinquency is by "the intensive study of the delinquent himself." If we admit that "conduct is the result of mental life," some exploration of the nature and capacities of the mind seems to be demanded. Terman's "The Measurement of Intelligence" provided the assistance I needed for this both as a teacher and as a magistrate. In following up the delinquency side I was early switched off to the study of degenerate families, Kallikaks, Hills, Nams, Jukes, and later on "Sam Sixty." In spite of subsequent criticisms of these books, the main facts impressed me and I quote the following from my report to the Birmingham Probation Act Committee in 1920 :

##### *Influence of Heredity on Delinquency*

The following table is constructed from particulars given in Terman's "Measurements of Intelligence" concerning heredity studies of degenerate families in America.

- (1) The Kallikak family, Martin Kallikak had two families :
  - (a) by an illicit union with a feeble-minded girl ;
  - (b) by marriage with a respectable girl of good family.
- (2) Hill family.
- (3) Nam family.
- (4) Jukes family.

—	Known direct descendants.	Of these were known to be :				
		Illegitimates.	Sexually unimoral.	Confirmed alcoholics.	Feeble-minded.	Criminals.
(1) K. (a)	480	36	33	24	143	?
(1) K. (b)	496	0	1	2	0	?
(2) Hill	709	24%*	10%*	24	48%	24
(3) Nam	784	?	431	187	?	40
(4) Jukes	540	108	{ 37 Syphilitics 50 per cent. of women	?	76 53 in poor-house	?

*Estimated cost to the state of three of the families mentioned above spread over a period of years, including prison charges, poor-house charges, etc.*

The Hill family 500,000 dollars in 60 years.

„ Nam „ 1,500,000 „ „ ? „

„ Jukes „ 1,300,000 „ „ 75 „

to say nothing of diseases and other evil influences they have spread (Dr. Terman).

Feeble-mindedness is 80 per cent. inherited.

The feeble-minded and their progeny constitute one of the great social and economic burdens of our modern civilisation (Dr. Walter Fernald).

Later on statistics came my way of the incidence of mental defect and sub-normal intelligence amongst those who were sent to reformatory institutions. I learnt that less than 50 per cent. were of normal adult intelligence and that some 15 per cent. were of such a low grade of intelligence that they ought to be permanently segregated. Further, I learnt that in one State alone the cost of trials and commitments of its feeble-minded delinquents amounted in the aggregate to 2,500,000 dollars per annum.†

I concluded from these facts that if I were to do "justice" (that overworked word) in assessing the penalty to be inflicted upon the offender, I ought to know something of the offender's heredity, etc. If he offends in consequence of congenital syphilis, or if he is feeble-minded, am I to consider these characteristics? If such offenders are sandbagged

\* Of the married women 24 per cent. had given birth to illegitimate children; 10 per cent. were prostitutes.

† "Juvenile Delinquency," H. H. Goddard, p. 18.

with a penalty, they soon come again for another dose. Is it of any use to continue the process indefinitely? Are we punishing for the offence or for the condition which predisposes its victims to offend? Does it serve any useful purpose to punish a mental defective because of his mental deficiency? Is it justice?

But mental deficiency is not the only factor to be considered. Recently we have been reading of the effect of certain illnesses upon the conduct of offenders such as encephalitis lethargica, Grave's disease, epilepsy, influenza sequelæ and others. The character of these illnesses, we learn, predisposes the sufferers to irregularities of behaviour amounting often to legal offences. Dr. Auden, School Medical Officer of Birmingham, said in 1922 :

" It has long been recognised that changes in behaviour more or less profound not unfrequently supervene upon certain inflammatory conditions or injuries to the brain. Only within the last two or three years, however, has the occurrence of the infection known as encephalitis lethargica supplied sufficient material for a study of these characteristic alterations. In a large number of cases," he goes on to explain, " clearly marked changes occur in the patients' reactions to their environment. There is irritability of temper, intolerance of control; the quiet housewife develops the temper of a shrew, the model husband begins to neglect his home. Indeed such alterations may assume a sociological importance, for cases will probably occur in which the question of criminal responsibility is raised and a previous attack of encephalitis may be urged in defence of some of these cases who may offend against the law." \*

What is the judge to do? Fine these sick people when they offend, or even send them to prison, in ignorance of the determining factor which has caused the victim to offend?

In the Probation Officers' Bulletin, No. 27 (July 1927) a bench of magistrates is reported as having sent a boy of fifteen years to prison for two months for stealing. In extenuation of their action one of the magistrates confessed that the bench were not told that the boy had been suffering from "sleepy sickness." Outrages such as these committed in the name of Justice upon those ill able to defend themselves may be expected to continue until the courts are furnished with competent clinical service.

Again, quite recently my attention was drawn to an analysis of 100 adult sex cases (criminal assault and indecent

\* The *Evening Express*, 4th September 1926, gives an instance where "sleepy sickness" was advanced as a plea in a case of theft.

exposure). Amongst them, I quote from memory, were 8 per cent. of certifiable lunatics, 26 per cent. of mental defectives and 11 per cent. of cases of senile decay.

In 45 per cent. of the above cases, without the assistance of the prison doctor, the verdicts must be suspect, because they were based on insufficient knowledge. One of the offenders had been punished by the court over thirty times for the same offence. Another was subsequently cured by voluntarily undergoing an operation and has given no further trouble since.

Wherever figures are taken for juvenile offenders we are startled at the amount of physical defect exhibited, e.g. 460 children examined by the Ohio Juvenile Research Bureau revealed a total of 2,083 physical defects, or an average of  $4\frac{1}{2}$  defects per child. The following table gives a rough comparison of the frequency of certain illnesses in offenders as compared with the frequency shown in a school medical officer's report of ordinary school children :

Ohio Research Bureau.		School medical officer's report.	
Total cases dealt with	460	Frequency per 460	460
Defective sight . . .	175		57
Defective hearing . . .	34		26
Defective tonsils . . .	174		78
Hernia . . . . .	5		1
Epilepsy. . . . .	13		1
Heart disease . . . .	9		8
Skin diseases . . . .	61		17

It is unfortunate that the above examples have had to be taken from two different communities, but I have not found comparative figures for the same community. What is the significance of this disproportionate amount of bodily defect in offenders when compared with the normal incidence of such defect in ordinary children ?

These and other considerations point to the need of expert examinations of offenders. The London Prison Congress, 1925, passed the following resolution :

. . . that before determining the penalty the judge should have a full knowledge of the physical and psychic conditions of the social life of the accused and the motives of the crime ; that for this purpose enquiries should be made before the trial, not by the police, but by the magistrate himself, or persons authorised by him, . . .

Can society be protected or offenders be reformed, if the court is kept in ignorance of these most material facts in the case?

Facts such as the foregoing bring us to the conclusion that in the interests of society as much as in the interests of the individual offender the court should have efficient means of conducting examinations into the physical and mental make-up of the delinquent. The place of such examination is at the court clinic, preferably not within the court precincts. And since much of the clinical work will be done not only to assist the judge in coming to a reasonable verdict but also to guide the probation officer in his work of reformation, the probation department would be its natural home. For it to become a preventive institution it should open its doors wide to the public.

Both in England and other European countries objection is sometimes raised to obtaining medical advice concerning the offender on the ground that the doctor may usurp the powers of the magistrates. The objection is as unreasonable as to suppose that the research chemist usurps the power of the directorate of his company.

It is quite as unreasonable to expect a judge to tell from the physiognomy of the offender the cause of his offence. There is a story told of a criminologist who was visited by a young friend. Seeing some photographs on the table, the latter began, "Why, this is like our friend Lord Dangle," pointing to one; "and this is the very image of the Bishop of Blankaster," pointing to a second; "and this," pointing to a third, "is the spit of me taken ten years ago." The criminologist intervened, saying, "You had better stop! Those are photos of my criminals." Dr. W. A. Potts relates that a magistrate once said, "If I thought that I couldn't recognise a mental defective when I saw one, I would resign from the Bench." The mental deficiency authority and psychiatric clinicians know very well that the magistrate can recognise only a few of the very worst cases, and the clinics exist now in hundreds of courts for the purpose of assisting him and others not only to know mental defectives, but large numbers of other cases even less easily recognised by the lay person, and to assist him in many cases with tried methods of treating them. All of us who have studied Dr. Goring's great book know that it is impossible to find the

mind's construction in the face or in any other part of the body. Physical stigmata in the delinquent are not recognised as evidence of delinquency.

On p. 227 above I referred to the boy sentenced to two months' imprisonment for stealing. In further extenuation of their action the magistrate added:—"He (the boy) had a callous demeanour and expressed no sorrow." Apparently the Bench judged by appearances. Their attitude reminds us of the story of the factory hands Brown, Jones and Robinson,

Brown to Jones: "Come on, let's slug Robinson."

Jones: "But why? He ain't done you no 'arm."

Brown: "No! but I dain't like the looks of 'im."

So the bench did not like the looks of the offender, and sent him to gaol. With an adequate clinical examination such a hash-up of justice would have been impossible. Even co-operation with the Education Committee might have prevented it.

The Prison Congress, 1925, adhered to a resolution demanding

that all who wish to become magistrates should be compelled to attend lectures on psychology, sociology, forensic psychiatry, penology and criminology.

Assuming that attendance at lectures involves assimilating them, what is the meaning of such a resolution? I take it to mean that without such knowledge it has become difficult, if not impossible, for the magistrate to interpret the findings of the clinics.

It is out of place to describe here the buildings and equipment of modern clinics. It is the personnel which counts.

The method by which the court clinic proceeds is shown to be as follows:

#### STUDY OF THE CASE \*

1. Social investigation should be made in every case, and should be set in motion at the moment of the court's earliest knowledge of the case.

2. The minimum essentials of adequate study of a case of delinquency are: study of the child himself, including a physical and a mental examination and study of his behaviour, developmental history, school career, and religious background; study of his environment, including his family

\* "Juvenile Courts at Work." Bureau publication No. 141, by Katharine Lenroot and Emma O. Lundberg.

and home conditions; an estimate of the essential causal factors responsible for his behaviour; and in the light of this estimate, recommendations for treatment.

3. Psychiatric and psychological study of the child should be made at least in all cases in which the social investigation raises a question of special need for study and should be made before decision concerning treatment, but only by a clinic or examiner properly qualified for such work.

4. The clinic for study of the child should be a separate branch of the court or a separate organisation fully available. The personnel required includes a physician trained in psychiatry, a psychologist, and one or more social investigators.

5. The physical examination should be thorough, and all the community facilities for diagnosis and treatment should be utilised. Physical examinations of girls should be by women.

6. For rural communities facilities for study of the child may be provided through the development of centres in urban communities or through travelling clinics under the auspices of State boards or commissions or institutions.

The examinations of offenders and of others brought by their parents to the clinics (the preventive side) are intended to evaluate detailed and accurate information as to

- (a) his setting in the community;
- (b) his physical condition;
- (c) his psychological condition;
- (d) the results of his psychiatric examination.

In illustration of the nature of European clinical examinations I give particulars of the leading points in the questionnaires which have to be filled in for the information of the court and the guidance of probation officers in three countries. A part of the questionnaire is devoted to clinical examinations. Other examples could be given.

#### BELGIUM

"All minors committed to State educational establishments go through preliminary examinations at the central establishments of observation." "The intelligence tests used are, Binet-Simon, Healy, Decroly, Vermeylen, Rossolimo, etc."

Judge Wets, in Chapter III of his book "Le Guide du

délégué," gives the various schedules of enquiries to be filled in by the officer responsible. They are of a detailed nature ; the most important relate to :

- (a) the child's identity ;
- (b) the constitution of his family ;
- (c) the material and moral conditions of his home ;
- (d) his school or professional career ;
- (e) his physical and moral state, his habits, aptitudes and interests.

Further, the Belgian scheme for the psychological examination of the young delinquent is of particular interest. Enquiries are to be made into :

1. Factors of organic development : (a) heredity, (b) hygiene, (c) nutrition, (d) physiological condition.
2. Pathological factors : (a) pre-natal, (b) early infancy, (c) adolescence.
3. (a) Psychological examination, (b) nervous system, (c) mental condition, (d) reason, sentiment, will, (e) anomalies.

The Institutions at Moll for boys and at Namur for girls are justly celebrated throughout Europe.

#### FRANCE

On pp. 85, 86 is given the form of questions employed by the Social Service for Children in Moral Danger in connection with children brought to the court under *correction paternelle* and now further extended. Unlike the Belgian service, the French is a private voluntary agency.

#### THÜRINGEN

The Thüringen Health Book (Gesundheitsbuch) is of interest in this connection. There is one for every scholar attending the schools. The Health Book is the property of the school last attended. It is available for use in the courts to assist in the diagnosis and treatment of delinquency. In addition to the child himself, the school doctor, the nurse, the teachers, the parents and the welfare workers all co-operate in producing his Health Book. Its twenty pages (including covers) set out amongst other things what we in England would call the school medical schedule and the mental schedule used for children examined for special schools, together with some account of environmental and heredity factors, etc. There are instructions to

secure uniform assessments and to prevent parents being unnecessarily alarmed by the record of ailments. I give a few particulars as an illustration.

Pp. 1 and 2. Facts relative to admission and leaving school.

Pp. 3-7. To be filled in by welfare worker (*Fürsorgerin*) or class teacher (*Klassenlehrer*) after questioning parents.

(a) The parental house: (i) the family, (ii) dwelling, (iii) children.

(b) The child; vaccination, nursing; age when walked, talked, had first tooth; whether delicate or not, etc. etc., a wealth of information on all features of its medical history.

(c) Additions for time whilst child is under supervision.

Pp. 8-14. The results of medical examinations signed by the school medical officer. There are 32 columns under which the child's characteristics are assessed.

Each column gives information.

(a) as to pre-school characteristics;

(b) as to the same during school age.

As an instance, column 12 deals with eyesight. The instruction reads that weak eyesight must be if possible determined according to Snelle and requires the registration of any colour blindness. Any pre-school record would be entered under (a), whilst under (b) would be entered the results of the examination.

This is supplementary to the record given under "(b) The Child" (see pp. 3-7 above), where particulars as to short sight, astigmatism, squint, etc., have already been entered.

P. 15. The gymnasium teacher signs the child's physical attainments on leaving school.

(1) Time for running 100 metres in seconds.

(2) High jump in centimetres, no spring-board.

Long jump in centimetres, no spring-board.

(6) Time for 2 kilometres free run.

The same page contains notes on professional guidance.

P. 16. *Jugendenschutz* (youth protection) gives particulars as to the nature of the child's employment.

With the Health Book there was enclosed a scheme of mental tests; Binet-Simon Bobertag, but whether or not this is reserved for delinquency cases only, I am at present unable to say.

In considering this question from the point of view of European practice, two sorts of examinations prevail.

(1) The examination of offenders in order to ascertain whether or not they are physically able to bear the punishment inflicted by the court. Such physical examinations are carried out by a prison doctor, private practitioner specially requested and sometimes by a doctor in a hospital.

(2) The examination of offenders to ascertain whether or not their state of mind is such as to make them "responsible" for the respective offences they have committed. Such mental examinations are more generally carried out in asylums, or what are now called mental hospitals.

Both kinds may be dismissed as having relatively little significance except so far as they constitute a precedent for the modern clinic as exemplified in the probation departments of modern juvenile courts, from which they are quite distinct.

In twenty European countries there is provision of one kind or another, State or private, for the mental and medical examination of offenders. It cannot be said that the court clinic or the court doctor is available for every juvenile court in the countries named, but only that there are instances of one or the other or both to be found.

The countries are :

Austria, Belgium, Bulgaria, Czechoslovakia, Denmark, England and Wales, Esthonia, France, Germany, Hungary, Italy, Latvia, Netherlands, Norway, Poland, Portugal, Russia, Scotland, Sweden, Switzerland.

In three countries there are specific instances of a doctor being attached to a court as psychiatrist, viz. in Austria, England and Wales and Germany. Probably Hungary and Russia have similar officers. In Austria, England and Wales, Germany (Hamburg) and Russia the courts sometimes make use of the clinics attached to their respective education authority.

Esthonia, Poland and Scotland make use of the University for such examinations.

Belgium has special and very complete provision for examinations in observation homes and in state educational establishments. Belgium is probably more fully equipped in this respect than any other European country.

Spain and Portugal make provision for these examinations in the reform schools (refuges).

Private institutions co-operate with the court for purposes of psychiatric examination of offenders in Bulgaria, Esthonia, Finland, France, Germany, Netherlands and Portugal.

Norway uses "competent authority" for this purpose and in Czechoslovakia an independent body formed by the

co-operation of Prague University with the police welfare organisation serves the court.

In the Netherlands " children are always examined, especially in the large towns where the work is better regulated."

Austria with trained probation officers, psychiatrist and clinical facilities appears to be exceptionally well equipped in the matter of child welfare. Germany, too, seems to be well equipped for the purposes of clinical work.

Pre-trial and post-trial investigations have a bearing on the attitude of the court to juvenile law-breakers. In the courts having a special law where the aim is not to punish but to care for the child, the time when the medical and mental examination takes place is not of serious moment except that it should be as early as possible so that the child may not be tortured by suspense. Where criminal procedure is strict it appears that two trials are necessary, the first to establish guilt or innocence, the second to assess the punishment if necessary. This seems needlessly cumbrous. In thirteen countries pre-trial investigations were admissible, but of these six or seven involved investigations as to the character of the crime committed rather than as to the character of the offender. Judge Wets speaks of the clinical department for the examination of offenders as the porch through which children reach the juvenile courts.

The following intelligence tests were used in one or another country, the Simon-Binet tests being clearly the most popular :

Binet-Simon, Binet-Simon and Bobertag and the Lazar-Tremel modification, Healy, Decroly, Vermeylen, Rossolimo, the Society for Curative Pedagogy's scheme in Thüringen, various, Simon-Binet (Terman).

Some countries leave the nature of the tests of intelligence to the experts charged with the examination.

For the tests in use in the Birmingham prison, i.e. for adults (sixteen years and over), see " The Psychology of the Criminal," Hamblin Smith, p. 32.

Twelve countries claimed the existence of observation homes to which young offenders may be sent in order that a study of their physical and mental make-up may be completed :

Austria, Belgium, Denmark, Esthonia, Germany, Norway, Hungary, Netherlands, Portugal, Poland, Russia, Spain.

The conclusions to be reached from the facts available seem to be :

1. That Europe is awake to the new movement in the diagnosis and treatment of crime and has made important progress in its practical application.

2. That the intensive study of the individual delinquent is being carried out to a considerable extent, in a few countries every offending child may be subjected to clinical examinations, if thought necessary.

3. That prevention is coming into prominence as a factor in the attempt to eliminate delinquency, by the policy of the " open door " for child guidance or court clinics.

4. That the fall in the figures for mental deficiency amongst delinquents results from increased care for the badly-equipped and segregation of the worst cases.

5. That it is being realised that the juvenile who is carefully guided through adolescence is less likely to go wrong later in life.

6. That there is no other means of preventing delinquency than the organisation of an effective prophylactic social service.

Dr. Healy says : " It depends largely upon the spirit of the social community to what extent the psychopath, the sufferer from psychosis, the neuropath or mentally deficient individual succeeds in keeping himself morally afloat in the said community." \*

To put it bluntly, every criminal is a reflection on the good government of his community.

Those who are interested in the views of psychiatrists will find their official credo in the American " Journal of Psychiatry " for October 1926. It is a remarkable document giving food for serious thought to those upon whom devolves the serious responsibility of judging their fellows.

The following resolution passed at the International Prison Congress, 1925, forms a fitting conclusion to this section :

Before imposing any sentence or penalty it should be an essential condition in the criminal procedure of all countries that the judge

\* " Journal of Delinquency," March 1927, p. 57.

should inform himself of all the material circumstances affecting the character, antecedents, conduct and mode of life of the offender, and also any other matters which may be necessary for the purpose of properly determining the appropriate sentence or penalty.

### XV. CRIMINAL RESPONSIBILITY

Nobody seems to know exactly what "responsibility" means. In a strict legal sense it probably signifies "the capacity to change one's conduct in response to the direction of certain painful associations." There was a time when inanimate objects, animals, children, idiots, and insane people were held responsible, but one by one they have been exempted. We hear of a conflict between the views held by those who believe in "free will" and those who are called "determinists." The law seems to divide people into two categories: those who have no "free will"—children, idiots, and insane people—and those who have "free will"—all the rest of humanity. It would be interesting to know how far this classification conciliates the two parties to the conflict.

In England the position as to criminal responsibility of offenders is clear enough. Under seven years of age a child may not be tried before the court for an offence. Between seven and fourteen years no act done by such persons is a crime unless the offender is shown to have sufficient capacity to know that his act was wrong. Between fourteen and sixteen years (young persons) he may still appear before the juvenile court. In drawing out my list I have called the period seven to sixteen years a period of partial criminal responsibility, but several of these periods in particular countries are divided, as in the case of England, into smaller periods of varying responsibility and sometimes the lower age has not been ascertained.

Country.	Ages of Partial Responsibility.	
	Lower limit.	Upper limit.
Austria . . . . .	10	18
Belgium . . . . .	—	18
Czechoslovakia . . . . .	{ 12	18
	{ 10	18
Denmark . . . . .	14	18
England and Wales . . . . .	7	16
Esthonia . . . . .	10	17
Finland . . . . .	—	15
France . . . . .	14	18
Germany . . . . .	14	18

Country.	Ages of Partial Responsibility.	
	Lower limit.	Upper limit.
Hungary . . . . .	12	18
Ireland, Northern . . . . .	7	16
Irish Free State . . . . .	7	16
Italy . . . . .	9	16
Luxemburg . . . . .	—	16
Norway . . . . .	14	16
Poland . . . . .	10	17
Portugal . . . . .	—	16
Russia . . . . .	14	18
Scotland . . . . .	7	16
Spain . . . . .	—	15
Sweden . . . . .	—	16
Yugoslavia. . . . .	—	18

In the majority of these ages there are qualifications, e.g. in Belgium only cases of mendicity and unmanageableness come before the juvenile courts between the ages of sixteen and eighteen years. In Czechoslovakia the two ages given refer to different provinces in accordance with their previous nationality. In some instances the cases coming before the court during the earlier part of the period are referred to the *conseils* to be dealt with. Some of the juvenile courts deal also with dependent, neglected, morally abandoned children. In these cases the lower age, if given, applies only to offenders. In France the ages at which the juvenile court operates are thirteen to eighteen years, but in practice the lower age is fourteen years. In some instances the lower age-limit indicates that children under that age who offend cannot be punished legally, but must be treated by medico-pedagogic methods; or it may mean that such offenders must be referred to parents or to the school for disciplinary measures to be taken.

For purposes of comparison with the table above it may be noted that in 1922 Flexner and Oppenheimer wrote :

In approximately one-third of the States (America) the jurisdiction of the juvenile court extends to children under sixteen years of age; in one-third to children under seventeen years of age; and in the remaining third to children under eighteen and above. The tendency of the more recent statutes is to make the age-limit higher.

Since 1922 there has been a considerable number of courts in which the upper limit has been raised. There are even cases where the upper limit has reached twenty-one years.

In such cases, however, the higher limit, desirable as it would seem to be, has been obtained at the cost of conceding concurrent jurisdiction. On the whole, concurrent jurisdiction is unsatisfactory; it has led to ugly disputes between the courts—disputes which could hardly have a good effect on the offender concerned or enhance the dignity of the court.

A determined effort is now being made in England to obtain the raising of these ages, see "Report on the Treatment of Young Offenders" (Cmd. 2831, 1927, 2s. 6d. net). In Belgium an attempt was made in 1925 to raise the *sans discernement* age to eighteen years. These efforts represent influential opinion which must sooner or later prevail. It is only a question of time. Even where the perihelion of eighteen years as the upward limit has been reached, workers amongst children remain unsatisfied. It puzzles many that a minor may be old enough to pay the penalty of death for murder, but is not old enough to pay the penalty incurred by not paying his debts.

It is remarkable that there have been fluctuations in the higher age-limit even in the records of a single country. Such fluctuations represent corresponding movements in the opinions of successive law makers. They are evidence that the present ages constitute but a phase in the evolution of the courts.

There is a strongly marked tendency in juvenile courts to raise the higher age-limit of jurisdiction in the direction of the recognised age of majority. In Europe and America I have met only two instances where there has been a retrograde movement, and in one case the reversion was only temporary. Even where the upper age-limit is eighteen there is often an extension in the case of those sent to correctional or reformatory institutions.

The lower age-limit is on a different footing. Usually it is confined to offenders and is a small concession to the view that the child is not an adult! It is possible under an artificial age-limit to calculate to a nicety the precise moment up to which a crime is not a crime. I find no value in such a calculation. If we are told that judicial convenience is served by such limit, ought we not to ask, "Is the law made for the child, or the child for the law?" and further, "at which age is judicial convenience best served? Is it at the

age of seven, nine, ten, twelve, fourteen or sixteen years ? ” An age-limit is too simple a standard to determine the complexity of the mind. The variations between the chronological age and the mental age of the child are too wide for the former to serve the ends of justice. Since conduct is the result of mental life, it is mental life that is the determining factor, not a chronological age-limit. In these days the science and art of measuring mental life have reached a considerable degree of accuracy and juvenile court practice is developing along these lines. When we remember that a child of seven years of age may have the mental development of a normal three-year-old child, or, on the other side, that of a normal twelve-year-old, the defects of the age-limit method become obvious. By the use of appropriate mental tests competent psychiatrists can compute the mental age within a narrow margin of error, and this knowledge of the mental age is of greater service to the judge in his task than the chronological age. He requires other information of course, such as the child's nervous and emotional characteristics, physical condition, etc., and to all these questions a mere birth certificate remains dumb.

The tyranny of an age-limit for children is not new. In the annals of Education it had its counterpart when children—“ the flowers of life,” as the Japanese call them—were merely objects to be classified according to age, not according to their abilities. That system had an inglorious end, but its effects lingered in the nervous disorders of its victims during later life.

Where the juvenile court has a wide jurisdiction and deals with dependent, neglected, unmanageable, abandoned and illegitimate children, a lower age-limit is obviously inapplicable. Where the court deals with offenders only I would say, paraphrasing the official “ credo ” of the psychiatrists, that the more we evaluate the social and individual factors entering into the failures of children to adapt themselves to their surroundings, the more we recognise crime as one group of such failures.

Crime can be scientifically studied, interpreted, and controlled in the same way as other characterial and behaviour disorders. In many cases an attack on the specific factors active in bringing about crime can be made by methods whose success has been proved. In other cases it

may be necessary in the interests of society to recommend permanent segregation. In still other cases in the light of past experience and discovered laws it is possible to detect and endeavour to prevent the development of potential criminality.

This "credo" indicates what many modern juvenile courts on both sides the "herring pond" have set themselves to do on behalf of the children of their respective States. They do not worry about the lower age-limit. They know it to be in conflict with the principle that the younger you "catch" your unmanageable child the better your chance of guiding him to worthy living.

The real reason for the persistence of the lower age-limit is because too many juvenile courts are still merely pennywise criminal courts, where the child is treated as a modern Minerva sprung from the head of a god and clad in armour to resist the onslaught of a vengeful Society; and where he is too often judged from a mouldy law book laying down penalties after the tenor of—

" Little sins like these  
One expiates at half-a-crown apiece."

To pound-foolish courts such as these no harassed parent goes willingly for guidance in rearing the more troublesome of the State's future citizens. The abolition of the lower age-limit is possible only in juvenile courts where an enlightened law has substituted care, protection and education for public vengeance. The socialised courts now springing up everywhere have both judicial and welfare functions. Under the latter all the community services are brought into line for the benefit of the child. Parents go willingly to learn how they may conserve their children as the flowers of life instead of its weeds. Such courts aim to sow the seeds of greatness to posterity.

## XVI. A LAST WORD

The information on which this survey is founded gives us cause for real optimism. In spite of much restlessness and some upheavals here and there throughout the Continent, in spite of financial embarrassments amongst the 500,000,000 souls in Europe, welfare ideals are germinating everywhere and striving towards maturity. Especially is this noticeable

in that most hopeful and fruitful field of juvenile care and protection. There is a very considerable amount of machinery for applying its principles both in the courts and in the protective organisations. The personnel grows rapidly and is imbued with the passion to conserve human happiness through the scientific understanding of the problems of human relationship.

There is cause at the same time for uneasiness. There are two voices in Russia. I do not judge between them. There is the official voice, which says that in spite of enormous difficulties—illimitable territory, financial embarrassments, even some uncertainty as to welfare orientation—the cry of the children receives priority of consideration. I have received some evidence confirming this. On the other hand, there is the voice of certain social workers. In the February number, 1927, of the *B.I.P.E.*, p. 163, Mme Kroupskaia, the widow of Lenin, is quoted from the *Pravda*, No. 51, 1925: "There are in our country 7,000,000 children registered as morally abandoned." Other authorities place the figure far higher. A Russian pedagogical journal, *The Educational Guide*, in the May-June number, 1925, gives the following details: "In certain establishments for lack of accommodation the children of both sexes are brought up together. In certain institutions girls and boys sleep in the same room, etc." An official report concerning the Ukraine draws a similar sombre picture and fixes the number of its abandoned children at over a million.

When reports are circulated that there are bands of children and adolescents homeless, diseased, living on theft and prostitution, sometimes a terror to the scanty population in remote districts, one wonders whether these reports are merely partisan hysteria or whether they are truly the despairing cry of lifelong child lovers who find a dwindling service of probation officers, a heavy fall in the number of child-welfare institutions, and whose hearts are perhaps torn at the spectacle of their life's work being slowly destroyed. They know full well that just as culture and art know no frontiers, so disease and crime seek no passports. They realise that, if true, such conditions are a menace not only to their own country but also to the whole of humanity. They feel in their bones that the real nemesis of war, revolution and famine is yet to come.