

First Section
First Quesyion
Abstract

The Indeterminate Sentence .

By Pedro Doarado

Professor of Penal Law, Salamanca, Spain.

In the field of the prevention of crime the repressive notion has been almost completely abandoned. There is now a tendency among penologists and others to use reformatory means in the treatment of crime. The end is to turn criminals into inoffensive members of society

into inoffensive members of society . This becomes a measure of social preservation , of education and of rehabilitation and it is preferable to the method of restraint with severity. Certain criminals have shown that they are not amenable to amendment , shall we then throw the helve after the hatchet and believe that all our trouble is ~~xxx~~ wasted? . No, it is much better to hold out a helping hand and if it is in vain then place these persons where they cannot give rein to their vicious propensities. The penalty looks not so much to the past as to the future if it has in view the reformation of the criminal. That being the case no one can fix in advance the length of time that will be necessary to bring about the desired result . To try to fit the penalty to the crime is impossible. You might as well make the whole work of the courts mechanical and press a spring corresponding to the crime. ~~which will make a~~ ball ~~ever fall upon the~~ ~~gun~~ ~~if it~~ . ~~if expiation were held~~ . If the idea of expiation is held it is equally difficult. What is punishment to one person is not to another. Again , if a penalty is given for the sake of intimidation ~~and~~ the criminal does not need such intimidation,

The Indeterminate Sentence . . .

By Pedro Duran

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sive members of society.

as he has no intention of again committing crime, then the penalty is useless and unnecessary and an unnecessary penalty is unjust.. And after a penalty has been applied if it loses its character of intimidation it should be replaced by something more useful. All educative and correctional penalties should have an indefinite character in order to secure reformation. As in medical treatment, where the cause and the remedy are sought and ^{the treatment is} ~~are~~ varied and indefinite, so penal treatment of criminals should be varied and indeterminate.

The question of the categories of delinquents to whom the indeterminate sentence should be applied has not been settled.. How long an individual should be treated under this system has not been decided. . It cannot be in advance. . That is why I have always held that the preventive sentence, by which one seeks to prevent crime instead of aiming at the punishment of crime already committed, should be applied with great judgment and circumspection. . The penalty should always be individualized to obtain the best result. Delinquents cannot be treated in classes

The strongest argument, not to say the only one, against the indeterminate sentence is the danger it might be to individual rights, if everything is left to the arbitrary discretion of the judge. However that is one of the arguments which prove too little because they try to prove too much.. The guilty person is more or less at the mercy of the authority charged with administering justice in any case.

What is the best means of warding off criminality? Is it not to try to acquire the ascendancy over human personality? To me this seems settled. If we gain the confidence ^{of a man} ~~of a man~~ whose tendencies are evil and whose actions make us mistrust them, we

as he has no intention of again committing crime, then the penalty is useless and unnecessary and an unnecessary penalty is unjust. And after a penalty has been applied if it leaves the character of intimidation it should be replaced by something more useful. All educative and corrective penalties should have an indeterminate character in order to secure reformation. As in medical treatment the treatment is the remedy where the cause and the remedy are sought and the varied and indefinite, so penal treatment of criminals should be varied and indeterminate.

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him we shall have nothing more to fear from him . He was our enemy, but has ceased to be so; perhaps we have even made a friend and co-laborer of him. He no longer desires the evil, but the good. He had desired to act in a criminal way; now he desires to be upright. The law-maker, the judge, the authority who shall secure such a result will merit the approval of society even if they have punished no one.

But, says some one, under such conditions the penal law would be a dead letter.. The law that looks to retribution and intimidation is already a dead letter. And no matter how much serum they may inject into it they cannot rejuvenate it . It is like a boat which leaks at every crevice and is past repair.. However if the old law dies there is another ready to replace it , which perhaps we must cease to call penal, in the sense in which that word has been used for ages, , and qualify it as a social law , or protective law, protective of criminals, as there exist laws protective of workmen, women, the insane, vagabonds, in short all who are exposed to dangers from a social point of view. This new law applied to delinquents is a fruit of the growing humanity characterizes that ~~remains~~ human life. . The ~~indeterminate sentence is in harmony with the spiritual~~ indeterminate sentence is in harmony with the spiritual tendency which has in view the transformation of the individual who formerly was dangerous to society that he may rise to the ~~plan~~ plane of useful and rational men, and by his own effort aided by the help of his ~~neighb~~ fellows.

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What is the result of this transformation?
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First Section
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Supplementary Sentences.

By Mr. Brück-Faber, Administrator of penal establishments of Luxembourg.

It is generally admitted that each ^{psychic} ~~pschic~~ function has its corresponding neurones and that the intensity of these functions is proportional to the development of the neurones. . . As a point of departure for a psychologic diagnosis of delinquents, with a view to their amendment we may consider :

a) the existence of neurones with antisocial tendencies whose special functions are revealed by the nature and circumstances of the crime;

b) the association of the will with unlawful pleasures demanded by these propensities. .

As bodily exercise strengthens the muscles, so psychic exercises strengthen the corresponding neurones. It is the part of the prison administration to employ psychic exercises among convicts that will arrest the development of vicious neurones and will make more active those that lean to virtue. . I have given to such treatment the name orthoneuronic. It is based on the finding out of the nature and intensity of the antisocial proclivities, the rational grouping of the convicts, individual treatment by psychologic exercises, and stimulation of the cooperation of the convict himself. These preliminary suggestions are the result of my professional experience.

Suggestive Sentences

By Mr. Brück-Faber, Administrator of Penal

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Every judicial sentence ought to be just, that is proportioned to the crime . Its principal function is to reform the delinquent . If he is not reformed when he leaves the prison he becomes a menace to society against whom steps must be taken. The indeterminate sentence is the means proposed to meet this difficulty . The possibility of detaining him till he has reformed is the only way to attain the desired end . That could be secured by making it possible for the government to hold the incorrigible prisoner , after the expiration of his sentence , till his amendment. That would be sequestration in the interest of public safety . It would perfectly realize the end sought by the indeterminate sentence while at the same time respecting the principle of justice.

This method could be applied to all convicts whose antisocial proclivities are so strong that they give themselves up to antisocial lawlessness.

If it be asked under what regime this prophylactic sequestration shall be carried on it would seem logical to continue same regime under which the penalty has been executed, with a special division in the prison for this category of delinquents. This could be interrupted when real amendment was seen. It would depend on good conduct . After a stage of probation long enough to admit of real reformation , perhaps an average of five years , the convict held at the disposition of the government could be liberated by higher authority.

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The Indeterminate Sentence

By Gabriele Napodano , Professor in the University
of Pisa.

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The idea of an indeterminate sentence is ~~repugnant~~ to the
judicial idea ~~that~~ that the judge should pronounce a sentence with
a minimum and a maximum, ^{limit,} according to circumstances and the gravi-
ty of the crime. , but it is in accord with the idea of penal
substitution for the correction of juveniles, by the establishment
of institutions ^{care for} to ~~keep~~ those juvenile offenders who are in-
sensible to Reformatory treatment . . For incorrigibles there
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is abnormal are both irresponsible before the law. Neither should
be considered delinquents . Government has discretionary power to ~~u~~
use means to defend itself against those who if left to them-
selves would certainly become criminals and against those who
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sentence is changed for the minor and the juvenile delinquent into
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ticed in Illinois, Michigan, Minnesota, Ohio, Pennsylvania and
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principle of this law was laid down in 1824 by Livingston in his
^{proposed} penal code . It was limited then to recidivists who had been
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International Congress of St Petersburg , in 1890 and in the Con-
gress for Criminal Anthropology , in Brussels in 1892, for dan-
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The Indeterminate Sentence

By Gabriel Wapshansky, Professor in the University

of Wisconsin

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The Indeterminate Sentence.

By J. v. Roos, Director of Transvaal Prisons, Pretoria.

The number of criminals in the Transvaal is increasing with alarming rapidity. Those of European origin are largely the flotsam of the Boer war or foreigners drawn to the gold fields. Many of them were criminals in their own land and they lead the colored people of the Transvaal into criminal ways. Very few of those who commit serious crime belong in the Transvaal.

The government has been trying to meet this rising tide of crime and for that purpose has studied the methods adopted in other countries, especially the laws of Great Britain and the United States.. But in all these laws there is the objection that they have not ~~been~~ ^{its} carried to ~~their~~ logical consequence, ~~but~~ the principle of the indeterminate sentence, but have clung to minimum and maximum limits. The Australian colonies are the only countries which do not have this reproach to bear. New South Wales in particular has applied with great success the very practical system of Mr. F. Neitenstein, controller-general of prisons, who has recently retired after a long and honorable career.

As the result of this study the government of the Transvaal ~~has~~ resolved to adopt as a model the enactment of New South Wales and ^{it} has inserted in the law of 1909 (No. 338) the principle of the indeterminate sentence, without minimum or maximum ^{limit,} for all ~~prisoners~~ criminals who have committed in any country and at any time, three or more grave crimes.

The Indeterminate Sentence.

By J. V. Moore, Director of Tennessee Prisons, Princeton.

The number of criminals in the Tennessee is increasing with alarming rapidity. Those of European origin are largely the victims of the war or foreigners drawn to the gold fields. Many of them were criminals in their own land and they have the colored people of the Tennessee into criminal ways. Very few of these who commit serious crimes belong in the Tennessee. The government has been trying to meet this rising tide of crime and for that purpose has studied the methods adopted in other countries, especially the laws of Great Britain and the United States. But in all these laws there is the objection that they have not been carried to their logical consequence, but the principle of the indeterminate sentence, but have clung to minimum and maximum limits. The Australian colonies are the only countries which do not have this reproach to bear. New South Wales in particular has applied with great success the very practical system of Mr. B. Wittenstein, controller-general of prisons, who has recently retired after a long and honorable career.

As the result of this study the government of the Tennessee has been advised to adopt as a model the enactment of New South Wales and has inserted in the law of 1902 (No. 458) the principle of the indeterminate sentence, without minimum or maximum, for all prisoners who have committed in any country and at any time, three or more grave crimes.

The crimes included are ~~violation~~, brigandage, arson, fraud, counterfeiting, theft, concealing stolen goods, extortion, rape, immorality, etc. (The law is given in full, but is omitted ~~here~~ here as the main points have been stated.) The convict may be liberated on probation. Each institution is to have a board of visitors to whom the director will annually present a written report of each prisoner. The law provides for probation and ^{for} a commission of surveillance/ composed of the director of the house of detention, who acts as president, two citizens of good repute, the inspector of prisons and the consulting physician of the principal penal establishment. The chief judge of the ~~Transvaal~~ has an equal consultative voice in the commission and all the papers are submitted to him. No one whose duty it is to have active guardianship of the convict is allowed to sit on the commission. Upon the favorable report of the commission the governor can release the inveterate criminal on probation. . These measures to protect the individual rights of the convict are considered sufficient in the Transvaal.

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The Indeterminate Sentence.

By Giustino De Sanctis, Inspector-General
of Prisons, Italy.

[illegible]

But penalties as usually pronounced rarely accomplish this of prisoners subjected to end . Reformation of the ~~subjects of~~ the ordinary penal sentence is exceptional. Let us have the courage to confess this sad truth .The increase of habitual criminality has been distressing us for a long time , for it is noticeable in all countries. In Italy the increase is alarming , as seen by statistics. We maintain, without fear of contradiction that it is because the remedies for crime are inefficacious. . We must apply others at once . The time for half measures, or palliative measures, has gone by. Too long we have wasted time in sterile discussions hesitating to take action. Timid and undecided we have neglected to sieze our Ariadne thread and in the meantime ~~we have let the~~ evil forces wax ^{have} strong and threatening.

Penal

The Indeterminate Sentence.

By Giuseppe De Sanctis, Inspector-General

of Prisons, Italy.

This subject interests me deeply because I believe that

for certain classes of criminals it is a means of correction of

great importance. The old classic school denied that punish-

ment should be both reformatory and protective of society, but the

means to that end cannot be the same to-day that they were yester-

day. The only real social defense is to bring these criminals

back to the normal way of living by training them in institutions

suitable for that purpose under government control, where the

principles of a wise pedagogy can be applied.

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to arise our Alsatian threat and in the meantime we have let the

evil forces wax strong and threatening.

Penal legislation then having proved inefficacious as at present enforced the question arises of some other method and the indeterminate sentence is proposed as the best way of meeting these difficulties.

The indeterminate sentence may be applied to advantage in certain cases. Apart from persons found guilty of premeditated, serious crimes who have been sentenced to long terms; and those who have become delinquent by lack of intelligence- imbecility- insanity, etc there are still criminals of occasion and some habitual criminals who should be ^{su} submitted to the educative, but severe, discipline of the indeterminate sentence . . .

The sentence ^{however,} ought not to lose its character of penalty, therefore there should be ^{an} minimum limit, according to the circumstances preceding and accompanying the crime. After the expiration of that minimum the convict should be held till he shows himself fitted to be restored to society.

But there should also be a maximum fixed beyond which the indeterminate sentence should not go, for reasons of justice and equity. ~~His~~ Release, however should be decided by a commission. No convict at Elmira can be held beyond the expiration of the maximum limit of his sentence. I conclude then as follows:

1. The indeterminate sentence may be applied to occasional ^{premeditated} and habitual delinquents, but not to those guilty of grave crimes.

2. There should be a minimum and a maximum limit; the sentence to be pronounced only after a careful juridic and psycho-physiologic study of the crime and the criminal. The imprisoned should be held in institutions suitable for the purpose and under officers trained to carry on the work of education and reformation in a rational manner.

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enforced the question arises of some other method and the indeterminate sentence is proposed as the best way of meeting these difficulties.

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2. There should be a minimum and a maximum limit; the sentence to be pronounced only after a careful juridic and psycho-physiologic study of the crime and the criminal. The imprisoned should be held in institutions suitable for the purpose and under officered to carry on the work of education and reformation in a rational manner.

The time of detention should be divided into four periods in which the convict may gradually become used to liberty.

There should be a commission to determine matters of discipline and the transition from one period to another.

Proper oversight of those who are liberated should be exercised and care should be exercised with reference to those who are to be released by expiration of sentence who have not given evidence of amendment. .

I believe that there should be farther restriction of the liberty of those who have not amended, especially if the person is a recidivist, or has no means of subsistence, and no trade. Regard must also be had to the age of the person, the young being more susceptible to reformation. This final measure should be pronounced by a court acting after an enquiry by the commission already mentioned. Such convicts, held for further treatment, should be kept in institutions of an educational character, rather than in a prison, and organized in a special way.

But, I ask myself, if these expedients ^{do not} have the character of an indeterminate sentence? If so, why not adopt the indeterminate sentence? That ^{would} be the best solution of the question and ~~would~~ meet the exigencies of society. Let us then demand it at once.

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The Indeterminate Sentence.

By Dr. Rusztem Vambéry, Budapest.

After discussing the relation of the indeterminate sentence to the common idea of penalty as a means of punishment the writer asks: Is there not then among the things prescribed by the classic penal law more than one method of dealing with criminals which excludes the idea of chastisement, - as for example, pardon, suspended sentence, conditional release ? The real aim of the penalty should be the protection of society and to attain it there is needed beyond punishment methods of education and protection as well as of repression. The justice of the indeterminate sentence and its compatibility with the fundamental principles of modern penal law depend ~~on~~ on these two things, the protection of society and the minimum limitation of individual liberty. There is ^{no} need of arguing at length that the necessity of protecting society springs not from the crime committed but from the character of the criminal. Still, one encounters great difficulty in deciding exactly ^{to} what classes of criminals the indeterminate ^{sentence} should be applied. The original plan of Mr. Brockway, first presented in Cincinnati in 1870 and afterwards embodied in law in N.Y. in 1877, and which has been carried out at Elmira ever since, - as well as in 17 other institutions - applies ~~it~~ to adolescents, while in Australia, So. Africa and New Zealand ^{it is applied} ~~applied~~ to recidivists, as do the English and Norwegian laws. This difference does not alter the essence of the measure. Neither of these two groups of laws can serve as a base of departure. Both sin through the same fault. They seek to classify

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By Dr. Ruzsa V. Nagy, Budapest.

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criminals according to distinctions furnished by the penal codes still in force. These, however, do not distinguish between men, but between the actions of men, which are characterized by different degrees of gravity, considered ethically.

It must not be forgotten that the indeterminate sentence is only a form of procedure, which makes possible the educative idea. The value of it is closely bound up with the reformatory system of which it is the corollary and with which it stands or falls. It is indisputable that so far as the individual is concerned the indeterminate is the educative sentence par excellence. He who looks seriously at the end of the penalty and who recognizes the incompatibility of vengeance and reformation, will not hesitate to say that the indeterminate is the only acceptable reformatory sentence. To suppose that a person dangerous to society can be transformed into a useful citizen by sentencing him to a definite term of imprisonment is as absurd as when the soldier who took leave of his wife cried, "Adieu, I am off for the thirty years war"! It is hard to understand how any one who recognizes reformation as the object of the penalty should not hold to the indeterminate sentence. It is clear that if the training of the minor needs an indeterminate time, it is even more true of the adult, whose way of thinking, feeling and acting are more strongly fixed. It goes without saying that the training and discipline for men above thirty would be different from that for juvenile delinquents of fifteen, but the indeterminate character of the sentence is equally indispensable in both cases.

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Certain groups of criminals may be excluded from the indeterminate sentence: political criminals, accidental and those who have committed a crime in passion, but who ordinarily are not a source of danger to the public. Those who are incapable of profiting by the educative side of the treatment but are a source of danger, may be held for the sake of society, with an guaranty that such incorrigibles should not be held longer than the interests of society demand.

I must confess that in some of my writings ten years ago I ~~was~~ was opposed to the indeterminate sentence and if the works of Barrows, Herr, Hartmann, Baernreither and Freudenthal, as well as the instruction facts gathered from the practice in America have convinced me of the error of my former opinion, I comfort myself by thinking that one of the most illustrious representatives of our science, Mr. Adolphe Prins has sinned through the is guilty of the same inconsistency.. At the same time I have not lost all my skepticism. I still doubt the possibility of securing individual liberty by a purely institutional guaranty. If the maximum limit be adopted, that scruple would at once vanish. I see no objection to a maximum of ten years.

Another objection, that the duration of confinement would be left to the arbitray authority of the administrative authorities is met by establishing the method of authorizing the court to decide upon the time of release, or to a body constituted to make such decisions, as suggested by v. Liszt and Dr. Freudenthal. But the true guaranty of individual liberty always resides in the moral and intellectual qualities of the officers charged with carrying out the indeterminate sentence. There is no reason why a prison officer should not exercise the function of judging

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whether a man is to be trusted to meet the requirements of the indeterminate sentence. .

The battle of the pen that is kept up, especially in Germany against the indeterminate sentence seems to be on account of a lack of confidence in reformatory methods. To cite only one example: Mr. Schoetensack is out of patience because the prisoners in a reformatory have good food, that they quench their thirst at the inexhaustible fountain of Victor Hugo instead of drinking from the everlasting little religious tracts and moral stories with morals ; that the convicts should be treated with gentleness and politeness. In short it does not seem to occur to him that they should be treated other than in a Prussian prison. He is nettled that classes in ethics at Elmora should have discussions which might awaken in their souls the spirit of opposition , even- God forgive me! to conceptions of social order! In giving wing to his imagination he seems to forget that the reformatory aspires not only to discipline the men but to fit them to fight with honor the battle of life. . All the same the American conception , which meets the exigencies of practical life , overcomes theoretic scruples and I am convinced that the time will come when the the reformatory idea will sweep away the last vestiges of the revengeful side of penal sentences.

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First Section
First Question
Abstract

Supplementary Penalties.

By Sir Evelyn Ruggles-Brise ,

President of the English Prison Commission.

A law for the prevention of crime, passed in England in 1907, added to the English criminal code a supplementary penalty. An investigation made by the government in 1904 drew public attention to the alarming increase of recidivism. The statistics showed that although 70 per cent of the first offenders were not again found in prison yet those who were convicted a second, third, fourth and fifth time were returned ^{respectively} ~~in the following proportions~~ ^{64, 71, 74, 79} were from 48, to 79 per cent. The committee reported that it was useless to punish recidivists for the crime for which they were arrested; that their real crime was in the involuntary persistence in criminal habits and it proposed that the courts should be allowed to pass a new sentence by which such criminals could be isolated for longer periods, that the community might be better protected.

An analysis of the sentences pronounced in 1905 by the Superior courts shows that about three-fifths of those found guilty & had been previously convicted and that a third had had five or more sentences. In cases of breaking and entering three-fourths of the cases were of recidivists.

The tenor of the law is as follows: When a person has been found guilty of a crime and is known as a recidivist by the jury, the court may pronounce an additional sentence ordering that at the expiration of the penal sentence to labor he may be detained during the good pleasure of His Majesty, this detention to be called

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preventive detention.

The person will not be declared a recidivist unless the evidence has shown to the jury that the person is guilty of the crime with which he is charged and that he had previously been found guilty at least three times and that he ~~g~~ had led a dishonest and criminal life.

This recognizes the principle of the indeterminate sentence. After along discussion in Parliament the principle of an accessory penalty was accepted, for the protection of the public, but with the clause that the period could not be over ten nor less than five years. This limitation was a compromise ~~x~~ between the different currents of opinion. It was recognized that severe measures must be adopted to prevent repeated depredations on society. The results will be awaited with interest. At present ~~they are building~~ a prison is in process of construction which will be as secure as any ordinary prison, but which will grant certain indulgences for good conduct and render the conditions less hard than in ~~the~~ ordinary penal servitude. This system ought to lead to the reformation of the prisoner so that with the lapse of time he may be a candidate for conditional liberation.

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First Section
First Question
Abstract.

The Indeterminate Sentence.

By Ugo Conti, Professor of Penal Law in the
University of Rome.

For misdemeanants we need special sentences^{Something}, or substitutes for the ordinary sentence, tempering the execution of the penalty, like conditional liberation. For ordinary delinquents, and for those ~~are~~ almost incorrigible there are needed the ordinary sentence, the severe sentence, the Complements de la peine ^{de la peine} of the sentence. An indeterminate sentence meets neither one case nor the other.

As to children and the insane, if they commit crime, they are subject to special measures ~~the~~ at are always "indeterminate" in character, but they cannot be applied to those persons who are fit subjects for judicial procedure. American reformatories confound "correction" and "punishment", while Italian reformatories are institutions for "correction", quite apart from establishments for "punishment". Certainly we respect and admire penal establishments in North America, but for theoretical and practical reasons we must avoid imitating them blindly. . . In place of the indeterminate sentence we propose the "complements de ^{la} peine", as I myself proposed to the International Prison Commission.

(This complement of sentence) may be added to the penalty after the expiration of sentence, with a new restriction of liberty. The law looks at crime in the abstract; the judge sees it in the person of the individual who has committed it; the administration considers it in the man who is undergoing sentence; and the same judge and the same administrative officers consider the individual at the expiration of his sentence with a ^{new} ~~few~~ to prevent

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him from perpetrating crime again.

Recidivism by itself does not determine the application of the complement of penalty , but ordinary recidivism is an aggravating circumstance , for it increases public disquiet and it justifies an increase of penalty , which may go even to perpetual punishment . Habitual recidivism ~~does~~ renders the application of the complement necessary .

The final authority in deciding these cases might be called a penitentiary commission. The judicial authority in the commission would be represented by the judge,; the police by the chief in the place where the sentence was pronounced. The prison would be represented by the director of the establishment in which the convict had been held and he would give all the facts about the convict's physical condition , his morality, his aptitude for work, etc.. This commission after hearing the reports written and oral, would ~~lxxx~~ hear the convict himself.

We have the honor to propose the following conclusions :

Without overlooking the ~~the~~ penitentiary institutions inspired by that idea an indeterminate sentence can never be accepted, as a former Congress has affirmed. ~~xxherexixxxxxcplacecc~~ In that which concerns persons under long sentences , ~~for~~ habitual recidivists guilty of serious crimes, or offenses considered by the judge or by the law as professional in character; or vagabondage , there is room for a n obligatory ulterior judgment of these persons at the expiration of their sentences, which may be entrusted to a penitentiary commission duly constituted , with ~~ele~~ments borrowed from the penal judicial authority, from the police and from the prison authority.

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If this commission decided that an extension of sentence is desirable, constituting a complement ^{de la peine} ~~of penalty~~ the person under consideration should be heard in his own behalf, or through his counsel. If he is found deserving of such extension of penalty the commission should pronounce an indeterminate sentence, with surveillance, or any other measure authorized by law. The measure adopted may be made more or less severe, and at the end of a year the commission should examine the results of the decision, and annually should revise its work.

The person who has submitted to this complement for five years may ask for the benefit of conditional liberation, or after ten years may ask for definite release and the commission should give him or his counsel an opportunity to be heard.

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RUSSELL SAGE FOUNDATION

105 EAST 22D STREET

NEW YORK CITY

May 30, 1910

My dear Dr. Henderson,

Here is a very much "boiled down abstract of M. Conti. I can find no equivalent for his complement de la peine, nor of the word he uses so much which I have managed to evade, temibilité. I have five dictionaries at my elbow but not one gives the least sign of the word and tho I know the Italian root I dare not make an English word. So I have just used his conclusions. Will you please write in the Eng. equivalent for his "complement". I take it that it is an "added" penalty, ~~but~~ but I have not heard this discussion before and without knowing what temibilité means I am at sea.

We shall be in Canada, I trust, by the time this reaches you. It is a long trip for Mabel, who does not even go down stairs yet.

Yours sincerely

Isabella Barnes

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105 EAST 23RD STREET

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Robert C. Brown

First Section
First Question.
Abstract.

THE INDETERMINATE SENTENCE.

By A. Berlet, president of the Tribunal of
Pont-Audemer, France.

Respecting above all else individual liberty we cannot admit the system of the indeterminate sentence. We see in it a backward step, not progress. There would not even be a legal maximum limit if the ideas of some of the partisans of the indeterminate sentence were adopted. Such a change would be going back several centuries, putting absolute power into the hands of those charged with the execution of the sentence, an annihilation of the fundamental principle of the separation of executive and judicial powers.

Is there then no other means of proportioning the length of penalty to the reformation of the convict? We see only one, conditional liberation. Not ~~th~~ the form that was instituted in France in 1885, but such as has been adopted by several other governments, with the addition that the sentence should include the possibility of conditional liberation. . The judges having all the facts, are better able to decide on the minimum of penalty to be given. ~~Asxi~~
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Berlet 2

of the case demanded and the judges might give a new sentence softening or reenforcing the first one.. The prison administration should be free to refuse or to grant liberation between the minimum and maximum fixed by the sentence. But desirous to safeguard individual liberty as much as social interest permits, we think that on the expiration of the minimum limit the prison administration ought to make a report to the judiciary as to the necessity of refusal, or postponement of liberation; or in case of liberation to so inform that authority. That report will show to the judges that the question of the reformation of the convict has been considered. It will draw the attention of the judiciary to certain questions to be studied and it will help the prison administration.. No surprise can then be possible and a decision will be adopted only after careful examination.

By sharing the power between these competent authorities we hope to see full effect given to the penal treatment of the convict. The following is what we ask the Congress to adopt.

I. Every sentence should take into consideration conditional liberation and should fix the earliest date at which the convict may be conditionally liberated. The prison administration should inform the court of this liberation if it takes place at that date. If the period of detention appears too long the same administration should refer the matter to the court before the expiration of the minimum. In case of refusal to prolong it the term of detention should end on the day fixed.

II.If the prison administration regards the minimum as too long in consideration of the good conduct of the prisoner, a report should be addressed to the court and the court may be called on to fix anew the term of detention.

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II. If the prison administration regards the minimum as too long in consideration of the good conduct of the prisoner, a report should be addressed to the court and the court may be called on to fix anew the term of detention.

Berlet 3

III. After the expiration of the minimum fixed by the court the prison administration has the right to grant or to refuse conditional liberation after preliminary advice from the judicial authority.

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First Section
First Question
Abstract.

The Indeterminate Sentence

Assuming that a rational relation exists etc.

By Frederick Howard Wines LL.D.

Criminology is the science that deals with crime and criminals. It includes criminal jurisprudence, whereas penology treats solely of the infliction of penalty. The new criminology is the inevitable reaction against the old codes which it seeks to replace by others more in harmony with modern civilization. The sentence referred to in this question is the indeterminate sentence with a definite maximum limit, and sometimes with a minimum limit also.

Conditional liberation, sometimes called the ticket-of-leave, preceded the indeterminate sentence. They are logically related to each other as component elements of an advanced prison system. The indeterminate sentence is the central feature of the new criminology. Its abandonment would be a retrograde step.

It is nearly half a century since my father, Dr. F.C. Wines, interested me in prison reform. There were then three great wrongs that called for redress: Political, partisan control of prisons; contract labor, as practiced in America; and the severity of discipline of the prisoner and the punishment. It is true the law said that reformation was one end to be sought in imprisonment, but few prison keepers had faith in his reformation. Public sentiment required three things of the warden: a secure hold of the prisoner, a self-supporting prison and that life should be made so insupportable to the prisoner while in prison that he would be deterred from again committing crime.

Not many prisons became self-supporting, but many contractors amassed fortunes, from which they contributed liberally to campaign funds for political parties. Coercion of prisoners was practiced

The Substantive Duties

First Section
First Question
Abstract.

Assuming that a rational relation exists etc.

By Frederick Howard Winsor, LL.D.

Criminology is the science that deals with crime and criminals. It includes criminal jurisprudence, whereas penology treats solely of the infliction of penalty. The new criminology is the inevitable result of the old codes which it seeks to replace by others more in harmony with modern civilization. The new one referred to in this question is the indeterminate sentence with a definite maximum limit, and sometimes with a minimum limit also. Conditional liberation, sometimes called the ticket-of-leave, preceded the indeterminate sentence. They are logically related to each other as component elements of an advanced prison system. The indeterminate sentence is the central feature of the new criminology. Its abandonment would be a retrograde step. It is nearly half a century since my father, Dr. W. W. Winsor, interested me in prison reform. There were then three great wrongs that cried for redress: Political, religious control of prisons; a lax system, as practiced in America; and the severity of discipline by punishment. It is true the law said that reformation was one end to be sought in imprisonment, but few prison keepers had faith in the reformation. Public sentiment regarded these three things of the prison as secure hold of the prisoner, a self-supporting prison and that life should be made so insupportable to the prisoner while in prison that he would be deterred from committing crime. Not many prisons became self-supporting, but many contrived to amass fortunes, from which they contrived liberally to dispense funds for political parties. Corruption of prisoners was practiced

cruel extent. The system was inconsistent with the principles economics ; its brutality was shocking to every humane instinct. At length it dawned on the men who administered prisons that human conduct is regulated by two contrasted motives, of which one, fear, is degrading; while the other, hope, is inspiring. It was decided to try the effect of rewards instead of punishments as an incentive to industry and obedience . The first was to grant the prisoner a share in ^{his} ~~the~~ earnings ; the second to abridge his term of imprisonment. The latter took the form of commutation of sentence, on a fixed scale, by law. . This aided discipline . The commutation acts provided for the absolute discharge of their beneficiaries. The paroled prisoner is still in legal custody , tho at large, and he is liable to re-arrest , in case of breaking parole.

Another factor which led to the conditional liberation of prisoners was the successful experiments made with reference to juvenile delinquents. As far back as 1846 this had been successfully applied in Paris to such delinquents.

The old codes are founded on retributive justice, looking not at the future of the criminal, but at his act, which is a thing of the past. The effort has been to make the punishment fit the crime. No code has ever succeeded in this attempt, nor ever will. Thoughtful men must see that this is true.. If so the time has arrived for building on a more stable foundation .

What shall it be? Suppose we substitute for " crime" the word "criminal", and " treatment" for " punishment". The phrase will then read: "The purpose of the criminal law is to insure the proper treatment of the criminal". Why not? In his treatment we seek not his good alone, but also that of the community. The community is most effectually protected by the removal , or reformation,

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At length it dawned on the men who administered prisons that human conduct is regulated by two most potent motives, of which one, fear, is degrading; while the other, hope, is inspiring. It was decided to try the effect of rewards instead of punishments as an incentive to industry and obedience. The first was to grant the prisoner a vote in the election; the second to provide him with a fixed scale, by law. This aided discipline. The commutation acts provided for the absolute discharge of their beneficiaries. The paroled prisoner is still in legal custody, at large, and he is liable to re-arrest, in case of breaking parole.

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These ideas are founded on retributive justice, looking not at the future of the criminal, but at his act, which is a thing of the past. The effort has been to make the punishment fit the crime. No one has ever succeeded in this attempt, not even will. Thoughtful men must see that this is true. It is the time has arrived for building on a more stable foundation.

What shall it be? Suppose we substitute for "crime" the word "criminal", and "punishment" for "punishment". The phrase will then read: "The purpose of the criminal law is to insure the proper treatment of the criminal". Why not? In his treatment we seek not his good alone, but also that of the community. The community is most effectively protected by the removal, or reformation

of the offender. His permanent detention is merely an undesirable alternative. Unquestionably some convicts are reclaimable and other not, but what should be said of a prison that fails to use enlightened disciplinary methods because all the inmates cannot be reformed? Failure to provide such discipline and insist upon its maintenance is a governmental crime.

As an aid to a truly reformatory discipline there can be nothing ~~equal~~ equal to the indeterminate sentence. In itself it constitutes no part of the discipline : it is an aid, nothing more. Neither courts nor legislatures can prevent inequality of sentences yet nothing causes so much unrest in a prison as the inequality of sentences to which the prisoners have been subjected. The only equal sentence is the indeterminate sentence , with an identical maximum term of imprisonment for all convicted of a violation of a given section of the code, coupled with identical conditions by conformity to which it may be reduced to the minimum prescribed by law. This removes ground for complaint of injustice.

It also puts an end to the injurious hope of an unconditional pardon. The prisoner understands that the date of his release depends entirely upon himself. The authorities will help him to earn that release. They are his friends . He is disarmed of hostility to them. . Without the prisoner's co-operation it is impossible to effect a cure. The indeterminate sentence goes a long way to secure it. The hope of an early release prevents depression, stimulates to diligence and good conduct and aids in the formation of habits of industry and diligence.

Under the indeterminate sentence the prison itself undergoes transformation. Better men are put in control, men of higher educational moral character . broader culture. loftier aims , greater devo-

ion. They have a new responsibility, but they rise to meet it.

The prisoner leaves the prison with new hope. He goes to a home ready to receive him . He has a trade, money in his pocket, a chance to earn an honest living. During his probation he is watched over, encouraged, warned, steadied by the knowledge that failure on his part will result in his re-incarceration. His prospects in life are a hundredfold better than under an absolute discharge.

In proportion as the new criminology comes to be understood it commends itself to popular approval . That it has been imperfectly administered must be conceded . Not all the officials are properly equipped for their work, but developed in accordance with its real spirit and administered in accordance with that spirit and purpose the new system will do away with the evils of the old .

No doubt many prisoners have relapsed into crime . Some have never entertained the thought of abandoning a life of crime. They have succeeded in deceiving their keepers, but this does not often happen. How many, on the other hand have been saved from continuing a life of crime! Those who have resisted the efforts for their reformation under the indeterminate sentence would have been equally obdurate under a definite sentence and there would have been a great many more of them . The figures of the penitentiary in Joliet, Illinois, show that under the operation of the indeterminate sentence law the commitments in a decade were forty per cent less than in the previous ten years , notwithstanding an immense increase in general population. One of the best circuit judges in Illinois, testifies *that* during the twelve years prior to the passage of the indeterminate sentence act he re-sentenced not less than one hundred prisoners tried in his court, some of them three or four times, but in the twelve

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years following he had occasion to re-sentence but four.

It is a statistical fact that the average period of detention of convicts under the indeterminate sentence is longer than under a definite sentence, owing to the sifting out of the dangerous men who can be held for the whole maximum term. Society is therefore better protected under the new system than it was under the old.

The principle of the indeterminate sentence is identical with that which gives validity to the commutation acts already in force and which are held to be constitutional. The points of difference are non-essential. The maximum term may be fixed by the legislature, ~~f~~ for a crime. The legislature, in the code of criminal procedure under the definite sentence, confers this right upon the court. Under the indeterminate sentence, it withholds it. Under the commutation act the prisoner is absolutely discharged; under the indeterminate sentence, he is conditionally released. In either case his sentence is commuted. Executive commutation is derived from the written constitution; legislative commutation is created by statute. The former is an act of grace; the latter is a privilege of which any prisoner can avail himself by complying with the conditions expressed in a general law. Executive commutation is subsequent to sentence; legislative commutation precedes and modifies it.

The legislative ~~branch~~ branch of the government defines crimes and prescribes penalties; the judiciary proves them and renders judgment against the guilty; the executive enforces the judgments.

If the law forbids the court to pronounce a definite sentence, it may not do so. If it ordains that it shall pronounce an indeterminate sentence, it has no option to do otherwise. It has no discretionary power in the premises. The sentenced prisoner passes to the

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study of the executive and is subject to no other control. From this it is clear that the grant of a parole, upon conditions expressed in the statute, or formulated by the executive branch of the government, is no invasion of the judicial prerogative.. The act of granting a parole under the indeterminate sentence is not the reversal or modification of a judgment: it is its execution.

All that a parole board does is to decide whether ~~xx~~^{a convict} has fulfilled the conditions and is entitled to go outside the prison (He is ~~xxx~~ not removed from legal custody.) The delegation of the power to an agency selected by himself cannot be construed to be an invasion of the executive prerogative..

The legal aspects of the indeterminate sentence once settled, the question is reduced to one of public policy. Is it desirable? If so, how shall the greatest good be insured to the greatest number?

Certain practical questions must be met. First, as to the penalties. The legislature must bear in mind that the purpose of the indeterminate sentence is a reformatory purpose. To reduce the maximum term of detention to a point ^{where} ~~that~~ the prisoner will not feel the pressure which will induce him to yield to the means for his reformation is to defeat its aim. . All reductions in the possible maximum which assimilate an indeterminate to a definite sentence are to be deprecated.

As to the power vested in the courts, they should be given no discretion in the imposition of sentences. The courts ~~§~~ should not decide in any case whether a definite or indefinite sentence is preferable.. They should in no case have the right to name a maximum term other than that named in the code.

Finally, the right of the chief executive to administer the law in accordance with its avowed intent must be untrammelled.. The

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prisoner is required by law to earn his release: he should be held to that. His record will show whether he has done so. The law in this regard should act automatically. The chief factor in the decision should be the authorities having him under observation. . . Hence the importance of carefully selected prison officials and of retaining them in position. With properly trained officials in the prisons the governor should be chary of granting commutation as an act of grace , lest he should defeat the purpose of the law.

The powers of darkness do not take kindly to the new criminology. They have ridiculed and denounced it . And yet, in every state where the unconstitutionality of the indeterminate sentence has been judicially contested , the supreme court has declared in its favor. It has been upheld with greater unanimity, perhaps, than any disputed statute ever enacted by any legislative body in America.

Incompetent prison officials do not approve the indeterminate sentence. Prison contractors may be expected to oppose it, since it robs them of their best workers. Corrupt police officials protest against it . So do many prosecuting attorneys. Politicians of the baser sort have no use for it.. Nevertheless the new criminology , which is the joint product of religion and science, constantly gains fresh adherents and it begins to be taught in universities and professional schools. No reactionary effort to arrest the movement of the twentieth century toward higher ethical ideals can succeed. The hand that marks upon the dial-plate of time the slow advance of civilization will not turn back.

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First Section
First Question
Abstract

The Indeterminate Sentence.

By Dr. Gustave Beck, Switzerland.

To reply to this question there must be a ~~clear~~ clear understanding of the terms imputability and responsibility. The imputability of an act supposes^t that the person who does it has sufficient intellectual development to permit him to distinguish between an act which is permissible and one that is not; why one act is forbidden and another is allowable.

On the other hand the quality of being responsible does not depend on the development of the intelligence alone, but on that of the character, which should have acquired enough maturity to be able to subdue ^{evil} his inclinations and ~~his~~ habits.

Strictly speaking all who are not yet responsible for their acts, or are no longer so, should not be subject to penalties, but it would be a mistake to say that the state should have nothing to say about their treatment. They are precisely the ones, men who are powerless to repress their illegal acts, to rule their irregular lives, and guilty habits, who are the greatest menace to the state. To protect itself from them is the first duty of the state. For this class measures of safety should be adopted, rather than measures of punishment. For such cases extenuating circumstances are not to be considered. Whenever the examinations show that an offender is irresponsible then he should be committed to the authorities who will see that the public is secure from his criminal acts.

I am not a partisan of that extreme tendency which denies any measure of prevention in the principle of compensatory penalty. If properly applied it may serve as a warning and as deterrent to those who are responsible and who may learn to curb their

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I am not a partisan of that extreme tendency which denies any
measure of prevention in the principle of compensatory penalty.
If properly applied it may serve as a warning and as deterrent
to those who are responsible and who may learn to curb their

unlawful deeds , even if it does not reform their character . To rob such first offenders of their freedom for an indefinite time , because of a first offense, more or less serious, would be an infringement of their personal rights which would not be justified and the best treatment while in prison would harden rather than reform the convict under such circumstances. *on the part of the State*

But if a man has repeated his crime several times , showing that he is a habitual criminal , or a criminal by profession, then the time has come for the administration to deal with him summarily . It is a time when war measures may be adopted for the civil life.

The category of those not yet responsible, would include children who have not reached the age of penal responsibility. In all civil codes the state is empowered to look after such juveniles, not only after their property, but after their personal interests. For that reason it provides schools for them ~~and~~ in all civilized countries. Unfortunately the obligatory instruction is only the intellectual education , the development of discernment, while the formation of character and the feeling of personal responsibility , more indispensable than intellectual maturity , leaves much to be desired in all countries. Of course the pedagogic end in the confinement of youth demands an indefinite time, . It must be left to the director of the establishment. But any experienced head of an institution will say that the gravity of a crime is not an infallible index to the character of the youth who commits it.

Young people with good dispositions may easily be led into committing grave crimes, while often good-for-nothings are arrested for offenses which are not serious in the eye of the law. In the first case a sharp rebuke might bring the youth back to the right path without imprisonment; in the other case it might require prolonged discipline to develop the sense of responsibility in the good-for-nothing.

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Beck 3

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First Section
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The Indeterminate Sentence.

All that can be needed to-day, ^{to see if it} is to examine anew is the indeterminate sentence can be made to harmonize with the fundamental principles of penal law ; to show the experience already derived from the exercise of that sentence ; and to learn the view of those who have made a profound study of this question . The Commission having expressed itself in the first question it only remains for me to give my opinion as an observer and critic. I could do it briefly by saying that I agree completely with the conclusions of Dr. Freudenthal in his work on the reform of German penal law. (Vergleichende Darstellung des deutschen und ausländischen Strafrechts. Allgemeiner Teil, Band III. Berlin), but as that work is not generally known it may be better to give my individual opinion.

The practical execution of a sentence differs according to the way it is understood. He who sees in a sentence only reparation for the crime will trouble himself less with the reformation of the convict and the protection of society which must be considered in carrying out an indeterminate sentence. . . And if it is granted that that sentence may be applied to certain categories of delinquents and not to others it must be asked if the end of punishment permits such a distinction..

Now I say that the penalty should not be for reparation alone, but that the amendment of the criminal and the safety of society are to be considered ^{through} Reparation must be considered of course. In juvenile crime the preference is always given to the idea of reformation rather than to that of reparation, and in all civilized countries the principle of reformation and of protection play as large

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a part as the principle of reparation.

The amount of reparation must be measured by the act and the guilt of the offender. To-day that measure is fixed by the judge before the execution of the penalty, but I say, as do many other penologists, that it is just as well to wait to fix that measure till the execution of the sentence. During the trial the judge cannot measure the guilt of the offender as accurately as it can be measured during the ~~expiation~~ of carrying out of the sentence. The personality of the criminal and the character of his crime are certainly better revealed in the course of months and years of observation than during a trial which lasts a few minutes or a few hours. I may add also that with an indeterminate sentence the conduct of the convict is not always an index for liberation. A man should not be set at liberty because his conduct in imprisonment is without reproach, but because he has given proof that he is not wholly bad. . Those who are familiar with the penal system know that a capable and vigilant prison officer very quickly reads the real character of a convict. And there are several officers who are observing the prisoner at the same time: the superintendent, the physician, the chaplain, the instructor, and others who know the daily life of the convict and are able to judge it with exactness. These institutions also offer to the convict the chance to show his real character. Consequently if one wishes to learn the measure of reparation necessary to meet the crime one certainly is not subject to so many errors by doing it in the prison during the execution of the sentence ^{as} ~~than~~ in the court-room. It must be remembered too that the officers of prisons know their duties and though they are not clothed with the powers of the judge yet we may have confidence in them.

Conditional liberation has already exercised a large influence in prison affairs .

I believe that progress will lead us some day to empty¹ punishment itself, as much as possible, ~~for~~ the reformation of the convict and for public security and only when punishment alone does not secure these ends that other means will be found to secure them. Even now we are organizing our penitentiaries on that principle. We try reformation and if that fails then measures must be taken to deal with habitual, dangerous and incorrigible criminals that will conduce to the safety of society. I may refer here to the English "long-sentence-division."

Every one knows that as a measure of prudence a dangerous criminal must be held a longer time than an ordinary convict/. The indeterminate sentence allows that and at the same time the very fact that he is under an indeterminate sentence may incite the convict to reform.

Though in theory the indeterminate sentence might be applied to all offenses, yet in practice there must be restrictions. So long as we consider short term sentences necessary we shall not give to them the character of an indeterminate sentence. There are thousands of cases in which by inflicting a penalty we wish to show not only the offender, but all the people that the state will not tolerate such acts. In such cases we do not pay so much regard to the individuality of the offender as to the nature of the crime. The indeterminate sentence takes account of the personality of the criminal. But when it is a question of studying the crime with ~~the~~ the greatest care of trying to reform the criminal, to securing public safety, and to having a sentence that shall show the gravity of the case, then the indeterminate sentence is indicated.

That rule applies to adolescents up to the age of 25 and to recidivists in serious cases, but not in those of less importance. It is already practically realized in those cases, or looked to in

the future laws, the United States, England, Australia, Norway, Sweden, Switzerland and Austria.. Even where reform methods

take the place of penalties the character of the indeterminate period of detention prevails. For practical reasons an indeterminate sentence must be considered indispensable for the two classes mentioned while for others it may be desirable, tho not necessary. They are the cases where we have rather reparation in mind than the reform of the criminal, and where we are looking for public safety. Personally I am convinced that as a rule, ^{with} a counterfeiter, a fraudulent bank-rupt, a murderer who acts under passion, a political criminal, ^{the possibility} moral reformation is an ^{illusion} ~~illusion~~, ~~if not impossible~~ and that even a prolonged confinement would not bring it about. In those cases we may dispense with the indeterminate sentence. The opportunity to secure conditional liberation would be sufficient ~~for~~ for such cases..

It may be objected that it is not rational to apply the indeterminate sentence to one category of offenses and not to others. That objection is not justified. How many courts now pronounce different penalties for different crimes. It is not fair to say that the establishment of the indeterminate sentence would interfere with the necessary balance of penalties. Any one who says that shows that he is ignorant of the modern principle of the individualization of penalty. One would not give the same penalty to a beggar, a counterfeiter, a political offender, but the principle of the indeterminate sentence would be the same for all.

The objectors fear that the rights of the convict will not be sufficiently guarded. I cannot share their fears. For determinate sentences that guaranty residence ^{in the attitude of the judge.} ~~in the attitude of the judge.~~ But here the influence of the penitentiary administration is considerable and in fact it is from that that emanates the true significance of the sentence. Yet

Mittermaier 5

no one fears that the personal liberty of the convict is not sufficiently safeguarded by the penitentiary administration. I should have perfect confidence in the penal authorities to carry out the law, but it might be possible to strengthen the guaranty. At first there might be a minimum and a maximum. The officials would then be limited. Then there is a guaranty in the fact that the physician, the chaplain and others are associated with the superintendent and with good officers there would be little danger to the liberty of the convict. Promotion from grade to grade, employment at various industries, all these help to influence the convict. It would be imprudent to leave the fate of the prisoner to one officer alone. The best guaranty of the just treatment of the convict is the combined decisions of several officers who are working toward a common end. Such officials can tell whether a convict is a hypocrite or not. The idea of those theorists who may imagine that every prison director is deceived is as absurd as the ideas of the people who think that doctors are duped by those who pretend to be sick.

Finally the authority established to decide on liberation furnishes a new and important guaranty. Details are unimportant, but the principle is practical, as may be seen from the results in the United States. Thus I see no real obstacle to the introduction of the indeterminate sentence. Some other suggestions as to sentences have been made. Let them be tried. They are only advance-couriers of the indeterminate sentence.

A definite sentence followed by "preventive imprisonment" would be practically of the same effect as the indeterminate sentence.. In both cases the individuality of the prisoner would have to be taken into account. Therefore I conclude that the indeterminate sentence is the best form of prolonged imprisonment for delinquent adolescents up to the age of 25, who are susceptible of reformation ; 4

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First Section
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The Indeterminate Sentence

By Ernest Friedmann LL.D. Secretary general of the
Hungarian group in the Society for International Penal Law.

Criminality has changed greatly in Europe. It is distinguished at present by two characteristics. The great industrial development has brought crowds to the cities among whom are many who live from crime. Another trait of the criminal life is that it draws its recruits from neuropathics. The conflict for existence uses up brain and nerve force much faster than was true in olden times and this results in producing persons who become criminals. Neuropathics, epileptics and alcoholic persons form a large group of criminals. As to the criminal acts committed in passion they are legion.. If we ask how these different forms are met in the way of penalties for crime we must confess that they are far from being met.

Formerly the mode and amount of punishment were decided without the least thought of the individual nor of the social danger that he represented. The modern tendency is to look at the result of the penalty only from the point of view of the social imperfection. It seems to forget that the penalty is only the reaction of the action provoked by the crime.

At first the adherents of the modern tendency formulated their requirements in such a way that it was impossible to punish individuals upon whom punishment had had no effect nor had it led to the hope that by it they would be deterred from further crime. However ^{such persons} as ~~they were~~ a social peril they declared that ^{they} such persons should be imprisoned as long as they were a danger to society. . But as a result of much discussion these views have been modified.

What is the fundamental idea of the indeterminate sentence? Simply a recognition of the fact that it is impossible in advance to say how long a time it will take for a prisoner to be reformed. Now it is harmful and unwise to keep in prison a man who is no longer a source of danger to society, but on the other hand it is unjustifiable to turn loose upon society ^{one who is not fit for life outside}. The careful study of the convict during his incarceration can alone show how much time it will require to temper the small amount of will that he possesses.. This fundamental idea means that there should be no more penalty than is really necessary. This is the theory. But if you search through the three continents how it is obliterated! It is not possible to go so far in practice..

In the practice there are the most radical differences. In the European continent and in New South Wales they apply the indeterminate sentence to individuals of whom there is little hope of reform. They are isolated ~~and~~ rather for the protection of society. On the contrary in America, the indeterminate sentence is applied only in cases where there is hope of reformation. On the continent they apply it to habitual recidivists; in America only to those who have never before received any severe sentence.. In Europe it is used for youthful criminals; in America only for adults.. In America it is not applied for the gravest crimes, like murder.

There is another distinction to be made: is the sentence to be completely indeterminate or is there any limit? If there is to be maximum and a minimum limit how are they to be determined, by the law itself, or by the judge?.

The partisans for the indeterminate sentence maintain that it is easy to raise theoretical objections to it, but that when seen in practice it is much more difficult to find fault with it. I object

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to it as practiced. In theory one may agree that the possibility of reformation would justify its application, but as we have seen, on the continent it is used for persons of whom there is no hope of betterment, while in America it is employed for those who give promise of amendment. One seeks in vain for a uniform principle.

Youth is the time when reforms can be effected and in dealing with the young penalty may give place to other measures of reform. It is a tremendous work to save the young from crime and in its bearings it perhaps surpasses all other duties. And there is this advantage that in reform work of this kind one does not run counter to the basic ideas of penal law. In this field America has had great success.

It is not without pride that I point ^{to} out the fact that Hungary has recently adopted laws of great import in this direction. Since the first of January, 1910, they have applied in my country an entirely different regime for youthful offenders from the old penal law. The reform owes much to Dr. Eugene Balogh, professor in the University of Budapest, who ^{was} not only the author of the law, but the soul of this important social reform. After a careful examination of the culprit the judge may employ one of many expedients. He may reprimand him, he may put him on probation under surveillance, he may give him a domestic education, he may imprison him for an indefinite time, and in the gravest cases may send to prison for ten years.

Two other forms of the indeterminate sentence may be mentioned the isolation of those who are a peril to society, and conditional liberation..

To sum up what I believe:

1. The principle of the fixed sentence should be preserved.
2. The absence of the indeterminate idea is compensated by ~~by~~ other measures.
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with the young generally, we have placed to other measures of reform. It is

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applied for an indeterminate period to juvenile delinquents; indeterminate detention for the sake of safety for those who are a constant public danger , and conditional liberation.

In any case it is evident that times have changes and measures must also change . It is not enough to say that the old laws are sufficient . If the life has changed we must adopt new measures to regulate it. But these changes need not be revolutionary ^{so} as to overthrow the existing foundations .

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First Section
First Question
Abstract

The Indeterminate Sentence and Conditional Release.

By R. Garraud, Professor of
Criminal Law, Lyons, France.

Assigned.
Conditional release and the indeterminate sentence are destined to bring about the amendment of the prisoner if wisely administered. Just as one may desire to release a prisoner before the expiration of his sentence, if the object of imprisonment has been accomplished, so we may desire to retain him in prison until that object is accomplished and he has given proof of a serious determination to amend his ways . . . But these two conceptions have not had the same good fortune. Conditional liberation was an idea received with enthusiasm by almost all civilized countries: it made the tour of the world. The indeterminate sentence, on the contrary, has only been tried here and there, enough to show that it is one of the means, but not the only one, to secure the reclamation of the convict.

The indeterminate sentence is a system which has a minimum and a maximum limit . . . Commissions made up of jurists , penitentiary officers , specialists, might, at certain periods fixed by law, examine to see if the convict might be released , but their power would be limited because they could not open the prison doors before the expiration of the minimum term nor retain the prisoners behind bolts after the expiration of the maximum period . . . This method has advantages and few disadvantages. It would, in the first place, do away with that scourge of the present system, the short sentence . All the criminalists of the world are agreed as to the folly of

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~~the~~ short sentences, but the more penal science disapproves ^{them} ~~would seem that~~ the more does repressive justice ^{seem to} pronounce them.

Second, such an indeterminate sentence would conciliate the two parties who are concerned in the best solution of the problem. We all find it repugnant to our ideas of justice that a man should be sentenced without knowing what may be the limit of ~~t~~ that sentence. A limit fixed in advance by the Code and by the judge who applies it, reassures the public and safeguards the individual. It is true that life sentences with the possibility of pardon, or conditional release, are indeterminate sentences, but the law does not allow perpetual imprisonment except for the greatest criminals.

But those who oppose the indeterminate sentence for all criminals are usually ready to admit it for those persons who need so-called "treatment". This system has long been applied to minors. For the insane there should be special institutions. For the great mass of criminals who are defective there is greater difficulty in providing. There are many who are abnormal through various causes, neurasthenics, alcoholics, epileptics, habitual drinkers, morphine eaters, nervous people of all kinds. Various proposals have been made for such criminals: ~~to apply~~ ^{applied} some would have penal treatment and medical treatment successively; some would have special asylums where they would be both treated ~~treated~~ and punished and kept from doing injury, but whatever the plan adopted for these defective and abnormal individuals the only rational sentence would be the indeterminate.

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For vagabonds and beggars the French Code provided in 1832 what is practically an indeterminate sentence . The person who is considered a danger receives a short sentence at first and after that the government assumes the right to dispose of him for a time the duration of which is not fixed. ^{the case of} the person who is ~~In that fitness of the person which makes him a menace to~~ whose condition society calls for imprisonment more as a means of safety than as a punishment, and the duration ~~x~~ of it cannot be fixed in advance by the court.

If then the absolute indeterminate sentence is incompatible with our ideas of penalty , it is adapted to the treatment of those persons who are a danger to society and for whom ~~b~~ no prescribed period of treatment can be given.

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1st Sect
1st Quest.

2

Abstract.

Results of the Indeterminate Sentence Law,

By Amos W. Butler , President American Prison Association.

This law is in effect in many states, but has not been adopted by the federal government. A better name for it would be the indefinite sentence to distinguish it from the definite sentence still in use in many states..

The following states have reformatories , under the indeterminate sentence and parole system: Colorado, Illinois, Indiana, Iowa, Kansas, Massachusetts, Michigan, Minnesota, New Jersey, New York , Ohio, Pennsylvania and Washington. The state reformatory of Wisconsin has the indeterminate sentence , so worded as to make it definite for the maximum term.

In Indiana, Iowa, Massachusetts, Michigan, New Hampshire, and New Mexico the indeterminate sentence applies also to the state prison.

In Arizona, Connecticut, Illinois, Kansas, Michigan, Minnesota, New York, North Dakota, Oregon, Pennsylvania/, Vermont, West Virginia and Wyoming prisoners are committed to state prisons under either definite or indeterminate sentences.

Those imprisoned under the indeterminate sentence are usually released upon parole . Who should be paroled? Those who by their ability to keep the rules inside the prison give evidence of their ability to keep the law on the outside. They may be released under supervision and should report monthly to the institution while on parole..

The indeterminate sentence cannot be efficiently administered in an institution controlled by partisan politics. A non-partisan basis and the merit system are necessary to success..

lot 2nd
lot 1st

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by Judge W. B. E. Butler, President American Prison Association.

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Virginia and Wyoming, the indeterminate sentence is not applied.

Other details of indeterminate sentencing.

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ability to keep the law on the outside. They may be released under

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parole.

The indeterminate sentence cannot be efficiently administered in

an institution controlled by partisan politics. A non-partisan basis

and the merit system are necessary to success.

The most important part of the parole work is proper supervision.. In some states the work of local agents is supplemented by private societies . Some states give little or no supervision. In some private agencies alone supervise those released on parole.

There is variation as to the time of supervision. The Elmira Reformatory requires six months, Pennsylvania seven, Illinois nine. In Concord, Mass. and Bedford and Albion, New York, reformatories require supervision till the expiration of the maximum sentence. Transportation, clothing and some cash are generally given to the men going out on parole. .

In considering the results, one of the first is that the public have been led to take a more humane interest in the prisoner since the adoption of this system. Another result is seen in its deterrent effect. The statistics of the states employing the parole system and the indeterminate sentence (which are given in this paper), show that it is a very great improvement over the old system of imprisonment and release. Many prison wardens who are still working under the old system testify that a majority of their discharged prisoners return to criminal ways, while it is the exception, rather than the rule for paroled prisoners to be again convicted of crime.

Summing up the operations of the indeterminate sentence law, some interesting results are noted: 1. We usually regard the record of the men on parole as the chief result.

Approximately 25 per cent of those so released violate the terms of their parole. This does not necessarily mean that they commit a crime , but that they fail to observe the conditions of their release.

Butler 3

2. The average length of sentence under it is increased above that of the former system of definite sentences.

3. It is not popular with the confirmed or professional criminal.

4. The less experienced offender believes in it and profits by it.

5. Wherever the law is well administered the prison officers approve it, both as a help to the prisoners and as a means of discipline.

6. The views of prison officials, members of the bar, the press and most of the public have changed favorably toward this law.

7. There has been an awakening and extension of interest in correctional institutions through the parole work.

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