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CRIMINAL POLICY IN SWEDEN DURING THE LAST FIFTY YEARS

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OLOF KINBERG¹
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Criminal Policy in Sweden is still based on the Penal law of 1864 promulgated in 1865. That Law was the result of preliminary legislative work of about fifty years and abrogated the Criminal Code of 1734 which, like most laws of those times, excelled in draconic penalties. In comparison with the old Penal Code, the punishments of the Law of 1864 are considerably mitigated. The death penalty was thus limited to a few categories of crime, and all especially severe forms of capital punishment—death by torture or followed by infamous treatment of the corpse—were abolished.

During the time the Penal Law of 1864 has been in force, but few important alterations from the point of view of criminal policy have been made. Among these we notice the abolishment of penal servitude for life for persons having committed larceny after three previous convictions for the same crime, 1890; the abolition of the death penalty in 1921, and a revision of the fines in 1931, consisting in the amount of the fine being regulated according to the daily average income of the culprit.

The most important development of the Penal Law from the point of view of criminal policy refers principally to the creation of new legal institutions either as supplements to the Penal Law or as special laws.

Supplements to the Penal Law

The first new law of the last fifty years of importance to criminal policy—the Vagrancy Act of 1885—was meant to be a modernization of the Act of 1846 on “defenseless” (*försvarslösa*), i. e., people convicted and punished for certain crimes, those discharged on a verdict of not proven (*absolutio ab instantia*), and those who had been kept to work previously as “defenseless” in a public workhouse or in a special State workmen’s corps (*kronoarbetskåren*). By a proclamation of 1853 the Act on “defenseless” persons had been extended to include those who “out of laziness or inclination led a rambling and irregular life or omitted to procure lawful work.” By the Vagrancy

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Act of 1885 its application was limited to those "who wander about in idleness without seeking work, or whose life endangers public safety, order and morals." Judgments are pronounced by the county authorities. The maximum period of internment is three years. Convicted vagrants are kept in agricultural colonies.

The Lunacy Act of 1929 introduced the rule important in practice that a vagrant who during his stay at an agricultural colony is found to be certifiable must be kept there until he can be admitted into an asylum.

In connection with the general progress of democracy the Vagrancy Act has gradually become less frequently applied. Repeated projects for revised and improved legislation have been elaborated. But hitherto it has not been possible to have these projects passed in Parliament owing to the opposition raised partly by certain fractions of the Labor party, who allege that the Act is sometimes applied to socially blameless unemployed, partly by certain groups of feminists who contend that the application of the Vagrancy Act to prostitutes is an unfair treatment of the female sex, as the male clients of the prostitutes are not treated as vagrants. At present the State has only one Agricultural Colony for men and one for women. The total number of vagrants in these two establishments does not exceed 400 persons, which proves that the Act is applied only in exceptional cases.

According to European experience, vagrants are generally asocial individuals of the type known as passive habitual delinquents. Measures against vagrants are therefore an important part of criminal policy. Hence the strong interest in improved legislation which has produced no less than three Vagrancy Bills in this country during the last ten years.

The last of these Bills is based chiefly on the Inebriety Act of 1913, revised in 1932. As this Act too is of great importance to criminal policy, a short description of it may be appropriate. The fundamental idea of the Act is that not the abuse of alcoholic liquor, *in et per se*, but only such manifestations of abuse as are socially harmful are to be treated under the Act. The Act is thus applicable to persons addicted to abuse of alcoholic liquor who on account of such abuse are dangerous to themselves or to others, who depend on private or public charity, who fail to provide for themselves and their families, who are incapable of taking care of themselves, who disturb their neighbors, or have been convicted three or more times for drunkenness during the two last years.

The right of initiating proceedings under the Act is placed in

the hands of a Temperance Board, of which one has to be established in every district. This board will take preventive steps against an alcoholic and, if he does not correct his bad habits, apply for his internment. The application for a commitment order must be made to the proper county authorities. Dangerous alcoholics may be immediately dealt with by the police, who may also apply for a commitment order.

Alcoholics are treated in State Inebriate Reformatories or in other institutions recognized as public by the State, and where the treatment is subsidized by the State. The maximum period of treatment is two years, in special cases (dangerous individuals, incorrigibles, and alcoholics exempt from punishment on account of mental disease though not certifiable at the time of the sentence) it is four years. Discharge is conditional and followed by a period of supervision by the proper Temperance Board.

As mentioned above, the last Vagrancy Bill is based on the same fundamental idea as the Inebriety Act. It thus assumes in every community a Social Board for supporting and aiding action in respect of vagrants and which, if such action prove useless, applies to a special Court of which at least one member is a physician (psychiatrist). The period of internment is relatively undetermined. To make control of this group possible, every person proceeded against under the Act is registered in Central Archives. Discharge is conditional, followed by supervision by the Social Board.

As neither Vagrancy nor Inebriety is considered a crime in this country, the Acts against vagrancy and inebriety are not directly connected with the Penal Law. On the other hand, a large number of Acts have been elaborated of late which are intimately connected with the Penal Law and may be considered supplementary to it. Among these we note the Penal-Records Act (1900), the Juvenile Offenders Act (1902), the Probation Act (1906), the Conditional Release Act (1906), the Abnormal Delinquents Act and the Habitual Criminals Act (both of 1927), the Lunacy Act (1929). An important Bill on Alcoholic Criminals has also been prepared and will soon be proposed to the Diet.

The need for criminals to be registered has long been manifest in this country. In 1900 a Penal-Records Act was thus passed, and revised in 1914, 1917 and 1928. This Act stipulates that the sentences shall be recorded in a special List in the following cases: When a person is sentenced to penal servitude or imprisonment, or fined for larceny, or is declared incapable of holding office under the Crown,

or to plead for others in Court, or if he has been convicted under the Probation Act, or has been discharged on a verdict of not proven or acquitted on the grounds of insanity, or sentenced to hard labor, or re-sentenced to imprisonment after having been released on Parole, or when he has been placed in an Agricultural Colony for Juvenile Delinquents, or discharged from such an institution.

This List of Penal-Records is kept in a bureau of the Penitentiary Administration. Since 1926 reports are sent from the prisons regarding any prisoners treated in mental hospitals during previous sentences.

Whenever a person is prosecuted for crime in any Court, inquiry is made whether there are any entries concerning him in this List. If so, his previous sentences are entered on the Court records.

Steps are now taken to establish a Central Criminological Archive. Proposal in this direction was submitted as early as 1908.²

In accordance with a recent proposal made by the Institute of Social Science, Stockholm University, all reports from the legal medical officers who examine the mental condition of prosecuted persons are to be sent to this Institute. This material will subsequently be completed for statistical purposes by the Institute of Social Science and, in medical and hereditary respects, by the Forensic psychiatric Clinic at the Central Prison of Stockholm. In a few years this material will amount to several thousand carefully observed cases of every variety of crime, and will form a basis for detailed researches on the causes of crime.

The Juvenile Offenders Act was passed in 1902 and revised in 1917. In this Act it is stipulated that criminals between 15 and 18 years of age sentenced to hard labor for not more than six months should, if this is found advisable "with regard to their mentality and environment and the extent of their intellectual powers, be placed in an establishment instead of being punished and if necessary detained there until they are 21 years of age." Such individuals are committed to Agricultural Colonies. The discharge is conditional.

By a Bill of 1922 it was suggested that sentences not exceeding hard labor for two years might be changed into detention in an Agricultural Colony. There should also be a possibility of keeping the offender there until his 27th year. This Bill has not yet been laid before the Diet.

²O. Kinberg: *Brottslighet och sinnessjukdom* (Criminality and Mental Disease). Stockholm 1908.

Probation

The Probation Act, passed 1906 and revised 1918 is of great importance. This Act refers to first offenders sentenced to hard labor for six months, and where there is reason to suppose "that the convict in view of his character or personal circumstances will prove corrigible without serving his sentence." In such case the Court may order the convict to be put on probation, and that the serving of the sentence shall be conditional on his conduct during a fixed time of probation. The time of probation shall last three years, during which time the convict may be put under the supervision of a Probation Officer. If during that time the probationer is sentenced for a new crime to hard labor or imprisonment, the respite *shall* be forfeited. If he is sentenced to a less severe punishment than imprisonment or hard labor, the respite *may* be forfeited.

TABLE I.

Giving the Number of Cases Sentenced Under the Probation Act and Put Under Supervision, and the Number of Failures from 1923 to 1931 Inclusive

| Year | No. of Sentenced | No. of Failures | Per Cent of Failures |
|------------|---------------------|--------------------|-------------------------|
| 1923 | 282 | 13 | 4.6 |
| 1924 | 394 | 19 | 4.8 |
| 1925 | 410 | 47 | 11.5 |
| 1926 | 442 | 34 | 7.7 |
| 1927 | 500 | 57 | 11.4 |
| 1928 | 500 | 57 | 11.4 |
| 1929 | 679 | 59 | 8.7 |
| 1930 | 672 | 63 | 9.4 |
| 1931 | 857 | 90 | 10.5 |
| | <u>4,736</u> | <u>439</u> | <u>9.3</u> |

This table shows that the fluctuation after 1923 and 1924, when the rate of failure was low, has been rather small and not exceeding 23% of the average rate of failure.

As, in applying the Probation Act, the State entirely foregoes all punishment, this Act differs very much from the demand of the Classical School of Jurisprudence that the punishment meted out shall be proportionate to the degree of guilt.

Conditional Release

Another divergence from former Jurisprudence is apparent in the Conditional Release Act (1906). A person sentenced to hard labor or imprisonment who has served two-thirds of his punishment

may under this Act be released on certain conditions, and the rest of his punishment remitted. The important factors influencing release on parole are the earlier life of the convict his conduct while serving his time in prison, and his circumstances after discharge in respect of chances of obtaining protection and earning his living lawfully.

On discharge, the released person must be under special supervision for the remaining time of his sentence, not less than one year. The discharge is granted by the King in Council on the representation of the Penitentiary Administration, which shall appoint a supervisor. When such release is granted, the Penitentiary Administration shall provide the prisoner with a license ordering him to proceed to the place where he will spend the conditional release period, to inform the supervisor under whose charge he is placed of his address, to give him all information required about his circumstances, and not to leave the place where he is staying without a written permit.

From 1907 to 1931 inclusive, 1,537 persons have been released on parole. Of these only three, i. e., 2%, have broken the conditions. The legal institution of release on parole has thus worked very well, probably due to the care exercised in examining the circumstances of the case before release. In other countries the results of release on parole have been less encouraging. Burgess, for example, tells us that in the institutions at Pontiac, Menard and Joliet in Illinois the average of Parole Violators was 25.7%.³

Death Penalty

In 1921 the death penalty was abolished in Sweden. The preliminary work had been done by professor Thyrén, who has played an important role in Swedish Penal legislative work for the last 25 years.

The abolition of death penalty was first proposed in Sweden very long ago. Thus, the Law Committee had in the Penal Bill of 1832 suggested the alternative abolition of the death penalty. Richert, the most prominent personality in Swedish legislative work in the middle of the 19th century, was a decided opponent to the death penalty. In stating his case with respect to the proposal of the Law Committee, he said:

"I do not intend to engage in speculations on the philosophy of the death penalty, being but little inclined to grope for philosophical principles where none are to be found, nor does this question rely on any doctrinal

³E. W. Burgess: Predicting Success or Failure Upon Release from State Institutions. *Journal of Juvenile Research*, XIII, 4, 1929.

system that may prevail more or less temporarily. I quite agree with people who argue that if there is an obligation on society to impose the death penalty, society also has a right to do so, and with those who consider death penalties justified provided they are necessary. These arguments, expressing in different words the same opinion, are as clear as daylight and would raise no opposition, did they not take for granted the very thing they set out to prove. The right presupposes the obligation, and the obligation presupposes the necessity, but the very necessity that might authorize the State to kill under the guise of punishment, cannot be granted without evidence. So far as I know, no evidence has hitherto been produced of such a necessity that has been satisfying from an unprejudiced empirical point of view, and such evidence is not likely ever to be produced. People presume the necessity of the death penalty because they believe in that necessity. Thus, here too it is merely a question of belief.

"However, beliefs do not all last for ever, as truth does. There are many kinds of beliefs, and they are subjected to change, the belief of one time being the superstition of another. The laws on the death penalty in every country give evidence in abundance of this."

In the same report Richert prophesied that capital punishment would not outlive him by half a century. As regards Sweden this prophecy was fulfilled. Richert died in 1864 and the last execution took place forty-six years later. But the prophecy was only partially fulfilled, for many countries persist in retaining a penalty which in bygone days was believed to be ordained by Christian Justice.

Since the third decade of the 19th century there has been in this country a critical attitude against the benefit of the death penalty. In the 1862-63 Diet the Estate of the Peasantry resolved that the death penalty should not be included in the new Penal Law (introduced in 1864), and in the Diet 1865-66 the same Estate unanimously passed a bill ordering the suspension of the death penalty for ten years. The remaining Estates (the Nobility, the Clergy and the Burghers) rejected the Bill.

In 1867, the abolition of the death penalty was moved in the Diet. The Bill was passed by the Second Chamber, but rejected by only one single vote in the First. Thus, it was only because of one man's opinion that the death penalty was not abolished in Sweden already in 1867.

In this country, as far back as the time when the Swedish Penal Law was introduced, people were thus in doubt whether the death penalty should be retained or not. This doubt has persisted. During the last decades of the 19th century it has gained further strength, a result of the rare application of this penalty in practice. Since 1865 sentences of death have been carried out in Sweden only in

fifteen cases, since 1900 only in one case. Thus, the importance of the death penalty as a practical measure of criminal policy has been very slight.

As was pointed out by V. Almquist, late Chief of Penitentiary Administration, in spite of the increasingly rare use of the death penalty, serious crimes against persons have decreased considerably. Thus, while from 1845 to 1855 an average number of murders and attempted murders of sixteen per million of the population were committed annually, this average dropped in 1922 and 1923, after the abolition of capital punishment, to 1.36. From 1922 to 1927 only 0.41 per million of the population were condemned for murder. In respect of manslaughter the decrease has been proportionally greater: the period from 1846 to 1850 giving an average of 12.57 cases and the years 1922 and '23 an average of 0.83 cases.⁴

When the question of the abolition of the death penalty was moved in the English Parliament, Mr. Almquist was invited to give evidence before the Select Committee on Capital Punishment. His experience from his own country led him to give as his opinion that the death penalty is not necessary for the protection of the community.

Against Abnormal Delinquents

Undoubtedly the most important legislative steps against criminality taken in this country during the last fifty years are the Habitual Criminals Act,⁵ the Abnormal Delinquents Act,⁶ and the Lunacy Act.⁷

The scientific discussion on the penal treatment of dangerous habitual criminals and abnormal delinquents was started in certain medical works on criminals and criminality. The first impulse of importance to subsequent developments in this country was given by Schuldheis' work on Insane Convicts,⁸ published in 1898. Schuldheis here clearly explained how the stipulation of Sec. 6, Chap. 5, of the Penal Law that the punishment of persons of so-called impaired imputability has to be mitigated, is proving dangerous to the protection of Society. The same point of view was later taken by a Prison Medical Officer, Mr. T. Petré.⁹

⁴V. Almquist: *The Abolition of the Death Penalty in Denmark, Holland, Norway and Sweden*. Howard League Pamphlets. New Series No. 7. London. 1925.

⁵Lag om Internering av Återfallsförbrytare, d. 22 April 1927.

⁶Lag om Förvaring av Förminskat tillräkneliga Förbrytare 22/4 1927.

⁷Sinnessjuklag, den 19 Sept. 1929.

⁸G. Schuldheis: *Om Sinnessjuka Fångar i Sverige 1865-1894*. Upsala 1898.

⁹T. Petré: *Sinnessjukläkareutlåtanden Från Fängelseläkarensynpunkt*. Hygiea 1901.

When a Bill was laid before the Diet 1908 proposing that the mental condition of every person sentenced by a Court to death or penal servitude for life and whose sentence consequently had to be referred to a Superior Court, must be examined before confirmation of the sentence by that Court, the Chief Medical Inspector of Mental Hospitals, one psychiatrist, and one Prison Medical Officer, were called upon to report on it. In their report these officers made among others, the following suggestions:

1. Article 6, Chap. 5, of the Penal Law, dealing with cases of so-called impaired imputability, should be abrogated.

2. Mentally defective criminals, who could not be improved by punishment, should be admitted into Special Establishments. The same should be done with juvenile offenders in Agricultural Colonies who had proved incorrigible and were exercising a bad influence upon other inmates or still needed treatment in an institution at the age of twenty.

3. Obligatory mental examination should be made on every person prosecuted for murder or infanticide or certain kinds of arson, damage, sexual crimes or attempts at any of these crimes. The same should apply to every habitual criminal re-convicted at last twice and to juvenile offenders who commit felonious crimes.

4. The treatment of mentally abnormal criminals and of such delinquents as are acquitted on grounds of insanity should be statutory.¹⁰

Some years later the Swedish Association of Criminology submitted a request to the King in Council for legislative measures against certain dangerous habitual criminals.

In 1920 Thyren, chairman of the Committee for Penal Legislation, was charged with drafting legislation against dangerous habitual criminals. The following year the Committee was called upon to draft legislation to deal with delinquents of so-called impaired imputability.

On the basis of the reports of the Committee, a Bill regarding the Internment of Habitual Criminals and one on the Detention of Delinquents of Impaired Imputability were laid before the Diet in 1927 and passed. These Acts, the Abnormal Delinquents Act and the Habitual Criminals Act were promulgated on Jan. 1st. 1928.

As the Abnormal Delinquents Act is of more importance to criminal policy, a short report on it will be given here.

¹⁰O. Kinberg, A. Petrén, T. Petrén: *Kriminalpolitiska Riktlinjer och Förslag*. Stockholm 1909. A proposal for obligatory mental examination had been made even earlier by Kinberg in his work: *Brottslighet och sinnessjukdom*.

Two categories of factors govern the application of this Act, one of a formally juridical, the other of a psychological nature.

As regards first offenders, the Act stipulates that the crime must be so serious, that the accused is liable to a punishment of at least two years hard labor. If he has served a previous sentence of hard labor, the fact that he is again sentenced to hard labor is sufficient, irrespective of the term of the penalty. If he has previously been sentenced to imprisonment for a sexual offense, a subsequent sentence of imprisonment for a similar crime is enough.

From this it will appear that the Act may be applied to habitual criminals in general, provided that the psychological conditions stipulated in the Act are present.

These are as follows:

that the accused is a danger to the personal integrity or property of others,

that he is only slightly or not at all corrigible by punishment,

that when committing the crime, he was in a state of impaired imputability.

If at least one of the formally juridical and all the psychological conditions are present, the Act can be applied.

As regards procedure, the Act stipulates that every case must be submitted to a special Commission of Internment, consisting of five persons, with the Chief of Penitentiary Administration as chairman. Of the other members, who are appointed by the King, at least one must be a medical man (psychiatrist) and one a judge. When the accused has been mentally examined and the trial ended, the records are forwarded to this Commission which has to decide whether the Act may be applied or not. If the Commission holds that the Act may be applied, the Court is free to decide whether this shall be done or not. If, on the other hand the Commission holds that the Act must not be applied, the Court cannot decide to the contrary. The Commission is thus a kind of specially qualified jury having the right of veto, but not entitled to decide that the Act shall be applied. The task of the Commission is to serve as a kind of guarantee that the Courts shall not apply the Act improperly.

If the Court, after having obtained the sanction of the Commission decides to apply the Act, punishment is meted out to the accused in the sentence *but* this punishment is changed to Detention in a Special Establishment.

The term of confinement is not determined in the sentence, but no release must be granted before the end of two years or, if the

term of punishment exceeds two years, not until that term has expired. As there is no maximum, the convict can be detained for life, if necessary.

Release can be conditional or definitive. The former is the rule. It is combined with supervision during three years which term can be extended once. The period of supervision can thus amount to six years at the most.

If the released misbehaves, he can be returned to the institution even if he has not committed a fresh crime.

From the legal point of view this detention is not considered a punishment, but a preventive measure.

The Act is applied to mentally abnormal individuals, to imbeciles of all degrees, to psychopaths, to epileptics, and to defective individuals suffering from mental invalidity as a sequel to some previous mental disease.

It is to be regretted that the name of the Act refers to so-called impaired imputability, though "imputability" is at present obviously a mere metaphysical figment without any empirical reality.

Thus, it does not signify a state of mind that can be verified by empirical examination, and therefore, instead of being a guide for practical jurisdiction, it is rather likely to obscure the ways of this important function.

As regards procedure, the Habitual Criminals Act is designed on the same lines as the Abnormal Delinquents Act. In both cases the accused is sentenced by Court to a certain punishment which, if consent is given by the Commission of Internment functioning for both laws, can be changed into internment.

Before the application of the Act, a mental examination of the accused has to be made.

The Act is similarly applied to two categories of conditions: a group of formally juridical factors, and another group of psychological factors.

The juridical conditions are the following:

the accused must have undergone hard labor for at least ten years, distributed among at least four separate sentences,

he must have been found guilty of an offense punishable by hard labor for at least two years, while serving a sentence of hard labor, or within five years of the last punishment of that kind.

The psychological conditions are partly the same as in the Abnormal Delinquents Act: the culprit must be dangerous and not corrigible by punishment. But while the Abnormal Delinquents Act

requires the accused to be of impaired imputability, this Act presumes that he is not in such a state.

As in the Abnormal Delinquents Act, the term of the internment is not fixed beforehand. The ordinary minimum period of internment is ten years. For special reasons it may be reduced to five years. Altogether the minimum period must not fall short of the term of the sentence increased by two years. If, for example, a man is sentenced to ten years' hard labor, the minimum period of internment must be twelve years. After twenty years the interned person is released, provided he is not still obviously dangerous. If, during or after his internment the detained is sentenced to hard labor for at least one year, he must be interned for life, provided that the Commission of Internment assents.

An individual who has been conditionally released must be placed under supervision for at least ten years.

As under the Abnormal Delinquents Act, the Commission of Internment always decides on the release of interned persons.

As appears from these conditions of application, this Act has a much more limited scope than the Abnormal Delinquents Act. Theoretically, it is applicable only to a small number of dangerous habitual criminals. Their number is still more limited by the strange condition of the Act that dangerous and incorrigible delinquents must be mentally normal. There may, nevertheless, possibly be dangerous and incorrigible habitual criminals who are not physically abnormal. But it seems to me that a criminality represented by individuals of such characteristics as dangerousness, incorrigibility, and normality, presupposes special social conditions as its causes. Maybe in countries like the United States, where criminality often results from the activity of gang-organizations, miniature societies in the larger society whose members have their own morals and are influenced by considerable financial profits and good prospects of escaping punishment it is considered a quite normal profession to be a thief, hold-up, kidnapper, racketeer, etc.

But in countries like Sweden, where these special factors of criminality hardly exist, where professional criminals are scarce, and criminal organizations rare, it is most unusual to find concentrated in one individual the psychological conditions provided for by the Act. By this strange formulation, the Habitual Criminals Act creates a category of delinquents: the dangerous, incorrigible and normal, in marked contrast to the dangerous, incorrigible and abnormal, which is likely to cause alarm to the Courts. For these, who do not lack

experience of criminals, might well wonder at this artificial and arbitrary distinction, creating two categories of which one—the clients of the Abnormal Delinquents Act—is only the first stage of the other—the clients of the Habitual Criminals act—the only real differences between these two groups being the number of sentences served and the number of years spent in prisons, i. e., *the criminal age of the delinquent*.

Instead of a real difference between the clients of the two Acts a group of delinquents is assumed which does not belong to any of them and, generally speaking is non-existent, at least in the country to which the Acts apply.

In spite of this lack of psychological realism in the preparation of the Habitual Criminals Act, a certain number of delinquents have been sentenced under it, as well as under the Abnormal Delinquents Act, as appears from the following table.

TABLE II

Male and Female Criminals Sentenced Under the Abnormal Delinquents Act, and the Habitual Criminals Act from 1928 to 1932 Inclusive

| Years | Sentenced Under Abnorm. Del. Act | | Sentenced Under Habitual Crim. Act | |
|------------|-------------------------------------|---------|---------------------------------------|----------|
| | Male | Female | Male | Female |
| 1928 | 2 | 1 | 3 | .. |
| 1929 | 23 | .. | 7 | .. |
| 1930 | 15 | .. | 15 | .. |
| 1931 | 11 | .. | 12 | .. |
| 1932 | 17 | 2 | 6 | .. |
| | <hr/> 68 | <hr/> 3 | <hr/> 43 | <hr/> .. |

During 1932 the Commission of Internment has agreed to the Abnormal Delinquents Act being applied to eight men and one woman on whom sentence has not been passed at the time of writing, and refused its consent in respect of eight men. During the same year the Commission consented to the Habitual Criminals Act being applied to one man who has not yet been sentenced, and refused its consent in respect of one man.

During the preparation of these Acts it was thought that they would above all be applied to serious crimes against the person. From this table we see that the Habitual Criminals Act has been applied, with one single exception, to thieves and other criminals against property, and this exception was a recidivist in respect of cruelty to animals. In no single case was it applied to a case of crime against the person.

TABLE III.

Male and Female Criminals Sentenced Under the Abnormal Delinquents Act and the Habitual Criminals Act, Classified According to the Crimes for Which They Were Convicted

| Crimes | Abnormal Del. Act | | Habitual Crim. Act | |
|--|-------------------|--------|--------------------|--------|
| | Male | Female | Male | Female |
| Larceny | 30 | 1 | 29 | .. |
| Larceny in combination with other crimes against property..... | 6 | .. | 10 | .. |
| Forgery | 1 | .. | 2 | .. |
| Fraud | 1 | .. | .. | .. |
| Fraud in combination with other crimes against property..... | 4 | 1 | 1 | .. |
| Arson, attempted arson | 7 | 1 | .. | .. |
| Assault | 3 | .. | .. | .. |
| Rape, attempted rape | 2 | .. | .. | .. |
| Incest, daughter 12-15 years | 2 | .. | .. | .. |
| Carnal knowledge, girls 12-15 years old | 5 | .. | .. | .. |
| Sodomy | 6 | .. | .. | .. |
| Lex veneris (An Act against spreading venereal diseases) | 1 | .. | .. | .. |
| Cruelty to Animals..... | .. | .. | 1 | .. |
| | 68 | 3 | 43 | .. |
| Total..... | 111 men, 3 women. | | | |

The Abnormal Delinquents Act, on the other hand, has been applied in sixteen cases to sexual criminals and in ten cases to persons having committed arson or assault. In the majority of cases the criminals have been convicted of crimes against property.

The reason why such a comparatively large number of persons have been sentenced under the Habitual Criminals Act although, as mentioned above, this group of individuals, as created by the law, is at least in this country psychologically fictive, and consequently non-existing, is that certain medical law-officers, and the Commission of Legal Psychiatry—which until the beginning of 1931 had to give super-arbitrary reports in every case where a mental examination of the accused was ordered by the Court—have allowed their judgment to be influenced by the presence or absence of the juridical conditions for the application of the Act. Though theoretically unsatisfactory, this is of no practical importance since the treatment of the delinquent will be the same in practice and in either case results in satisfactory protection to society. Besides, this practice gives an unexpected advantage to the legislator. For, if in a large number of cases of the same psychological category, the Commission of Legal Psychiatry arbitrarily state, now that so-called impaired imputability is present, and now that it is absent, it thereby proves that "imputability" is nothing than can be empirically ascertained, but only a

fective conception of no theoretical or practical value to the administration of the law. This knowledge will be of great use in the further development of the theory of Criminal Jurisprudence.

Compulsory Examination

The Abnormal Delinquents Act and the Habitual Criminals Act are to some extent supplemented by the Lunacy Act, which stipulates obligatory mental examination in certain cases. As mentioned above, such obligatory examination was demanded in 1908 by Kinberg. Thyrén adopted this idea in 1923 in connection with the Abnormal Delinquents and Habitual Criminals Bills and drafted a special Bill on the subject. This Bill proposed that a mental examination should be made whenever a person is prosecuted for murder or arson or attempts at these crimes; when the accused has previously been sentenced to hard labor or is now prosecuted for some crime punishable by at least hard labor; whenever a person is prosecuted for certain sexual offenses (carnal knowledge of girls under fifteen years) or sodomy; and whenever the Court contemplates the application of the Habitual Criminals Act. This proposal has been introduced in a modified form in the Lunacy Act of 1929, which orders a mental examination to be made:

in cases of murder or arson for non-economic reasons or in case of attempts at these crimes:

when the Court is aware that the accused has previously been suffering from mental disease, and

when the question of internment under the Habitual Criminals Act arises. In order that the Court shall be informed of any previous mental disease it is, as mentioned above, stipulated, in a supplement of 1928 to the Penal-Records Law that notice must be given to the List of all prisoners treated in a mental hospital. The List shall inform the Court of such notices whenever a person is prosecuted for crime.

The whole procedure with regard to prosecuted persons whose mentality has to be examined is regulated by the Lunacy Act in a way which is peculiar to Sweden and of which therefore a few words of explanation may be given.

Arrested individuals shall be examined in a prison mental hospital by a specially qualified alienist. Such hospitals are established at seven prisons in Sweden.

When the Court orders a person who is not under arrest to be examined, the Board of health shall order a physician to make the

examination. If possible, a properly qualified alienist should always be chosen for this purpose. Should the physician find that the accused ought to be admitted into an asylum for this examination, he has to report this and the Court shall then order his admission. The Board of Health will decide in which asylum the examination shall be made.

The object of the mental examination is to ascertain as fully as possible the mental condition of the accused, and it shall also include a full investigation of his hereditary and family circumstances, his life, environment, etc. The examination of the accused shall include his general state of health, medically, psychologically and psychiatrically. For this examination, the ordinary medical and psychiatric methods shall be used, as well as certain experimental-psychological tests.

The report on the examination shall be in writing, under four main headings:

1. A full report from the records of the Court regarding the personal circumstances of the accused and everything of importance relating to the commission of the crime.

2. An account of the result of the examination, and of the information regarding the accused and his environment, etc., obtained during the examination; whenever possible the accused himself will write his autobiography.

3. An epicrisis of the case, from the medical, psychological, psychiatric, crimino-psychological and crimino-political points of view. Special stress must be laid on the crimino-psychological factors. Every effort should be made in this epicrisis to obtain as reliable an estimate as possible of the dangerousness of the accused in various respects and under various conditions, his eventual corrigibility by punishment, and his social prognosis in general.

4. A short summary of such conclusions drawn from the examination as are of special importance to the Court for the case in point. These conclusions should invariably give the clinical diagnosis when such can be made, or if the diagnosis is uncertain, a statement of the chief psychological or psycho-pathological features of the accused. The summary shall also state whether the crime is to be considered as having sprung from any observed psycho-pathological traits, whether at the time of the report the accused is mentally diseased and in need of asylum treatment, whether he is dangerous, and finally whether he can be corrected by punishment.

In cases where the accused has been addicted to abouse of alcohol, this should also be stated.

The reports shall be of the same contents whether the accused is under arrest or not. The materials brought together by the mental examination are therefore homogeneous.

With regard to the procedure for the mental examination of the accused, it may be noted that the examining medical officers are appointed and paid by the State. Thus, neither the Court nor the Public Prosecutor nor the counsel for the defense have any influence on the choice of the examining medical officer. The latter is not present in Court at the trial, and is perfectly independent of the Court, the prosecuting authorities, the prosecuted persons, and their counsel; with the last named he has as a rule no contact whatever. Contradictory procedure is not used in the mental examination of accused.

The number of cases examined has for some years been rapidly rising in consequence of the new legislation on obligatory examination of certain cases, and of the increasing application of the legislation regarding abnormal delinquents and habitual criminals. In 1932, 347 persons were examined, of whom 252 were under arrest and 93 were not.

One hundred of the cases under arrest, and these are the most important from the criminological and social point of view, have been examined in the Forensic-Psychiatric Clinic of the Central Prison in Stockholm.

When the examination is completed, the report is sent to the Court, and a copy of it to the Board of Health. Guided by the report, the Court can pronounce sentence immediately but may, if it should be found desirable, request the opinion of the Board of Health. That authority too, on its own initiative, may order a fresh examination or have the accused sent to an asylum for a new examination.

The obligatory mental examination of certain prosecuted individuals and the establishment of the procedure for such an examination are necessary supplements for the practical and effective administration of the Abnormal Delinquents Act and the Habitual Criminals Act, as the application of both acts implies that evidence on the mental state of the accused is available.

These two Acts remove the serious inconveniences caused by the 6th article of Chap. 5 in the Penal Law which stipulates reduced penalties for abnormal and defective delinquents who are not to be acquitted on the ground of insanity. This unfortunate statute, which

was introduced into the Swedish Penal Law of 1864 has for more than 60 years been its Heel of Achilles, weakening the defense of society against abnormal and defective criminals who are very often the most dangerous, and more or less incorrigible.

The intellectual efforts of several decades have at last succeeded in substituting for this unsuitable treatment of a certain category of criminals, measures which may be considered satisfactory from the point of view of criminal policy. Since the treatment of mentally diseased delinquents is regulated by the Lunacy Act too, the defense against the criminality of the abnormal and mentally diseased is now fairly satisfactorily organized in this country.

In Relation to Alcoholics

There is another field of criminal policy, where important progress is under way, viz., the criminality of alcoholics. In 1931 a Bill was drafted which, adopting the procedure of the Abnormal Delinquents Act and the Habitual Criminals Act, stipulates that in cases where addiction to alcoholic liquor is a contributory cause of the crime, the Court shall, after having pronounced sentence on the accused, have the right of changing the punishment into internment in an Establishment for Alcoholics. In the supervision of this Bill, The Royal Social Board, which is charged with the control of the practical application of the Inebriety Act, has proposed a new procedure for the supervision stipulated in this Bill, on the following principles:

If during a trial the Court finds that abuse of alcoholic liquors is obviously a contributory cause of the crime, and the punishment to which the accused is liable, does not exceed two years' hard labor, the judge may, before pronouncing sentence, send the records to the County Authorities. If these decide that the accused shall be admitted into an Establishment for Alcoholics under the Inebriety Act, the Court may remit the punishment, on condition that the accused is confined in such an Establishment. He may be detained there as a dangerous persons for not more than three years, or, if during the preceding five years he has been detained in such an Establishment, for not more than four years. Under this Bill, the time of probation is five years. If the accused behaves badly during this time the remission of his sentence will be forfeited and the punishment executed. Before these statute can be applied, a mental examination must be made, in order to prevent abnormal and mentally diseased alcoholic delinquents, who ought to be placed in mental hos-

pitals or treated under the Abnormal Delinquents Act, being admitted into Establishments for Alcoholics where they would interfere with the ordinary routine of the institution.

Sterilization

Another important work in the field of criminal policy is the Bill on the Sterilization of the Unfit of 1929. The guiding principle of this Bill is that every case where sterilization is contemplated should be submitted to the Board of Health, and that sterilization can never be legally undertaken without being authorized by the Board of Health and the assent of the person to be operated on, however imbecile and idiotic he may be. On these two points the Bill was severely criticized. On the one hand, the liberty of the physicians to act according to the rules of science had to be maintained. On the other hand, to obtain the assent of an idiotic or extremely imbecile person might well be termed discreditable trickery. As an alternative to these regulations it was proposed that sterilization of persons of civil ability ought to be considered a private question between them and their physicians, and that persons lacking civil ability should be compulsorily sterilized after compliance with a certain procedure and with the assent of a Special Central Authority which in every case had to examine the reasons for sterilization. In the Diet of this year a request was made for a new Bill of sterilization to be brought in.

Preventive Measures

At the beginning of the fifty-year period briefly outlined above from the point of view of criminal policy, the only legal reactions against felony—except the death penalty which, as mentioned above, was very seldom applied—were punishment entailing loss of liberty in its two forms, imprisonment and hard labor.

At the end of this fifty-year period, the aspect of the criminal policy in this country is quite a different one.

The Penal Records Act means that we have approached the important future goal: the registration of all socially incapable persons, in order to enable preventive measures to be taken before the individual has had time to develop into a criminal. The Juvenile Offenders Act has made it possible to prevent the contact of maladjusted juvenile offenders with prisons and inmates of prisons and to provide for educational work under freer conditions. By the Probation Act too we are able to prevent young offenders from getting an intimate

knowledge of prisons and from being exposed to the dangers of psysical contagion and dubious acquaintances during their confinement. The release on parole enables us to reward a well behaved prisoner and to encourage his good conduct after release. Also to create, by the grant at first of restricted liberty, an opportunity for his gradual adaptation to full liberty.

Effective protection of Society is provided against abnormal criminals, and certain dangerous habitual criminals can be definitively taken in charge.

The procedure in respect of accused who may be insane or abnormal is regulated by more capable physicians being secured for the examination of the mental state of the accused and by the creation of more favorable conditions for the observations and work of these physicians. Thus, the level of the examinations is considerably raised. In that way the Courts are enabled to frame their sentences on a more empirical and reliable basis. Rules are issued for the treatment of mentally diseased and highly abnormal persons who are not liable to punishment, which constitutes a greatly improved protection of the community.

Obligatory examination has been made of large groups of accused persons, thus fulfilling the claim that every Court should be well informed regarding the persons it is going to sentence and have good reason to select one particular treatment of the criminal before another.

Improved legislation on the prevention of crime is being included in the Vagrancy Bill.

A new and more effective treatment of alcoholic delinquents is planned, extending the obligatory mental examination to a new group of criminals.

Finally, a new and in its preventive effect on crime still more far-reaching measure is contemplated in the Bill on the Sterilization of the Unfit.

Thus, in spite of the obstacles raised by an antediluvian juristic ideology and the misoneistic, anti-empirical mentality frequent among lawyers, the fight against crime in this country is at last being waged on a more empirical and psychological basis. The same may consequently be said of the criminal policy of Sweden as Galileo is supposed to have said of the earth: "Nevertheless it moves."