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DEVELOPMENT OF INQUISITORIAL AND ACCUSATORIAL ELEMENTS IN FRENCH PROCEDURE

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French criminal procedure owes its character to the inquisitorial procedure of the *ancien régime* and to the English accusatorial system introduced by the Revolution. Its development from these two sources throws into high relief the fundamental problem of all modern criminal procedures, the problem of how to facilitate an effective repression of crime and at the same time protect individual liberties. In Europe, the solution offered by the present French code had great influence from the time of its adoption in 1808. It was taken as a model by legislators of other countries who were similarly beset by the demands of their governments for a strong prosecution of crime and by the insistence of their liberal leaders that the rights of individuals be respected.

For the sake of simplification, the development of French criminal procedure may be considered in relation to each of the three stages which may be distinguished in any criminal proceeding. The first stage, that of the preliminary investigation, comprises such acts as the verification of the fact of the crime, the determination of the circumstances of its commission and the gathering of evidence to indicate the author. The second stage consists in deciding upon the basis of the evidence gathered in the preliminary investigation, whether there is justification for holding an accused for trial. The third stage is the trial itself, in which the evidence is produced and discussed and the accused acquitted or convicted.

I.

In the first stage of the French criminal procedure dealing with serious offenses,¹ the characteristic feature is the thorough investiga-

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¹The French *Code Pénal* divides offenses according to their gravity into "crimes", triable in the *Cour d'Assises* (composed of three judges and a jury); "délits", triable in the Correctional Court (composed of three judges) and "contraventions", triable by a single justice of the peace.—Article 1, *Code Pénal*.

tion by a magistrate, known as the *juge d'instruction*,² of the crime and the circumstances of its commission.³ The function of the *juge d'instruction* is to seek out the truth—to get to the bottom of an affair. The French law, at least as concerns the gravest offenses,⁴ does not confide to the Prosecutor, who is the opponent of the accused, the duty of gathering the evidence upon which it must be determined whether a prosecution is well founded, and by which the production of proof in the trial will be guided. Instead this task is turned over to an independent magistrate.⁵

The *juge d'instruction* has very wide powers. He interrogates witnesses and the accused and may confront them with each other. He may make domiciliary searches and seizures, either at the home of the accused or of a third person. He may commission experts to aid him in his investigations. He may order the detention of the accused and he decides upon the application of the accused for provisional liberty.⁶

²The *juge d'instruction* has no counterpart in Anglo-American law. He is appointed for a period of three years by the President of the Republic on the nomination of the Minister of Justice. He is chosen from among the judges or substitute judges of the Court of First Instance. He may serve longer than the term for which he was appointed withing having his nomination renewed if he desires to do so and if his services are satisfactory. He may be removed from his post as *juge d'instruction* at any time if his services are unsatisfactory. But the removal does not deprive him of his position as an ordinary judge. As such he has a situation for life.—G. Le Poittevin, *Code d'Instruction Criminelle annoté*, Commentary to Articles 55-56, pp. 256 et seq.

³The investigation by the *juge d'instruction* is legally necessary only in the case of "crimes." In the case of "délits" the Prosecuting Attorney has the choice of bringing the accused directly before the Correctional Court or of requesting the *juge d'instruction* to act. The Prosecutor takes the latter course only if the affair is complicated, if the accused has absconded or if he threatens to abscond. The Prosecutor is also obliged to bring the affair before the *juge d'instruction* if one of the accused is a minor—less than eighteen years—and liable to imprisonment.—Francisque Goyet, *Le Ministère Publique*, p. 279.

⁴Le Poittevin, *op. cit.*, p. 273, sec. 1; Charles Morizot-Thibault, *de l'Instruction Préparatoire*, pp. 84-85.

⁵The independence of the *juge d'instruction* with respect to the Prosecuting Attorney is one of the essential safeguards of individual liberty in the criminal procedure of France. Unfortunately, in practice certain conditions militate against the independence of the investigating magistrates. Although appointed by the President, they are nominated by the Minister of Justice who follows the recommendations of the Prosecuting Attorneys. Many substitute judges have been named as *juges d'instruction*. Their advancement depends in a large measure upon the opinion of the Prosecuting Attorney. See Morizot-Thibault, *op. cit.*, p. 96 et seq.

⁶René Garraud characterizes the powers of the *juge d'instruction* as follows: "This magistrate disposes of all the social organization to arrive at the discovery of criminals. Before him there are no closed doors, no inviolable domiciles, no assured liberties; his power is such that none other

Over the *juge d'instruction*, the prosecuting attorney has some measure of surveillance. He may demand communication of the documents in the case at any time. If he believes certain steps are necessary, he may request the *juge d'instruction* to take them. In making certain important decisions, the latter must consult the prosecuting attorney, but is not bound by the opinion of the prosecuting attorney. If the prosecuting attorney disagrees with the decision taken by the *juge d'instruction*, he may make an appeal to a higher authority.⁷

The essential characteristics in the preliminary investigation by the *juge d'instruction* are as follows: First, the investigation is secret. The witnesses are examined only in the presence of the judge and his clerk. The depositions of the witnesses are drafted after the examination by the judge who dictates them to his clerk. Counsel for the accused has no right to be present when witnesses are being examined or at any other operation of the judge with the exception of the interrogation of the accused. Secondly, all the results of the investigations, testimony of witnesses, interrogations of the accused, visits to the scene of the crime, etc., are put into writing and are included in the dossier of the affair. This dossier is the basis for the decision as to holding the accused for trial in the *Cour d'Assises* and is a means of controlling the evidence brought out in the trial. Finally, the accused is entitled to the assistance of counsel whenever he is interrogated by the *juge d'instruction*, and all the documents in the case must be put at the disposition of defense counsel the day before the interrogation.

The origins of the present preliminary procedure lie definitely in the procedure of the *ancien régime*. Except for the right of the accused to counsel and the absence of torture, the preliminary investigation provided by the present code is essentially that of the *Ordonnance Criminelle* of 1670.⁸ By this ordinance Louis XIV crys-

in the world can be compared to it."—*Traité d'instruction criminelle*, Vol. II, p. 548.

⁷Appeals against decisions of the *juge d'instruction* may be taken to the *Chambre de Mises en Accusation*. This court is composed of at least three Judges of the Appellate Court (*Cour d'Appel*). It has two functions. It decides whether the charges against an accused are sufficiently serious to hold him for trial in the *Cour d'Assises*, acting in this capacity, as a "conciierge of the Cour d'Assises." It acts also as an appeal court to decide appeals from decisions of the *juge d'instruction* which may be formulated either by the Prosecuting Attorney, the complaining party (*partie civile*) or the accused.—See Article 135, *Code d'Instruction Criminelle*.

⁸Faustin-Hélie, *Traité de l'Instruction Criminelle*, Vol. IV, p. 36; Esmein, *Histoire de la procédure criminelle*, p. 527 et seq.; M. Leveillé, in *De la réforme du code d'instruction criminelle* (p. 18), sums up the similarity as follows:

tallized the inquisitorial procedure which had been developing for three centuries, under the influence of the example of the church courts, the revived interest in the Roman law, and the increasing power of the king⁹. It endowed France with the clearest and most vigorous expression of the inquisitorial procedure the secular courts in Europe had ever known. It made a secret preliminary investigation conducted by the magistrate and incorporated in written documents the dominating feature of the entire procedure.

In two ways, the procedure sought to protect the accused. First it provided a large number of formalities to ensure the sincerity of the writings upon the basis of which the accused was tried. Secondly, an integral part of the procedure was the system of legal proof which assigned to every type of evidence a specific value and laid down the conditions under which a conviction could be pronounced. This means was taken to prevent arbitrary judgments.

The formalities failed to accomplish their purpose. They were frequently unobserved, especially by inferior officials, and particularly in the case of the depositions of witnesses which were written after the interrogation of the witness, and out of his presence, from notes taken during the interrogation.¹⁰

The system of legal proof,¹¹ instead of being a protection for the accused came to be a positive detriment. A capital conviction, the expected outcome of the ordinary criminal case of the period, could be pronounced only on the testimony of two eye-witnesses against the accused, or on the confession of the accused plus some corroborative evidence. In most cases the unimpeachable eye-witnesses were lacking. The confession therefore became absolutely necessary as a basis for conviction. If skillful and captious interrogation¹² failed to produce results, the investigating magistrate had one more

"It is the law of Louis XIV which under the name of the Code of 1808 still governs France. Only words have changed. The *lieutenant-criminel* of 1670 has become the *juge d'instruction*, but he has kept all his rights and he exercises them in the same conditions. As in 1670 it is he who, secretly and alone, gathers all the evidence. From the XVIIth to the XIX century, he has lost only one of his powers—he can no longer torture the accused."

⁹For the details of this development, see A. Esmein, *op. cit.*, Chap. II, p. 66 *et seq.*, and Chap. III, p. 135 *et seq.*; M. Faustin-Hélie, *op. cit.*, Vol. I, p. 338 *et seq.*; Henri Mariotte, *Le principe inquisitoire*, p. 31 *et seq.* For an authoritative presentation of the procedure under the *Ordonnance Criminelle* of 1670 see Muyart de Vouglans, *Institutes au Droit Criminel*, p. 33 *et seq.*

¹⁰Esmein, *op. cit.*, p. 333; Mariotte, *op. cit.*, p. 239 *et seq.*

¹¹For a sketch of the system of legal proof see Esmein *op. cit.*, p. 260 *et seq.*; Muyart de Vouglans, *op. cit.*, p. 303 *et seq.*

¹²See the precepts for a skillful interrogation of the accused laid down by D. Jousse in his *Commentaire sur l'Ordonnance Criminelle du mois aout, 1670*, p. 161 *et seq.*

recourse. He could order the application of torture, usage of which was also regulated by the *Ordonnance*.¹³

Esmein points out that public sentiment in the seventeenth century was not hostile to the rigors of the inquisitorial procedure. But the eighteenth century saw a decisive change. The vices of the existing criminal procedure were attacked by Montesquieu,¹⁴ by Beccaria,¹⁵ by Voltaire,¹⁶ and by a host of other thinkers. The search for remedies for the existing evils led to studies of institutions and their historical development in neighboring countries. Everywhere in the states on the borders of France in Europe, the inquisitorial procedure and the same attendant vices were to be found. In England, however, where the accusatorial procedure had been preserved, the French reformers saw the guarantees for the rights of the individual which were lacking in France. The feeling of the reformers was epitomized in Voltaire's observation that English criminal procedure was directed toward the protection of an accused while the French criminal procedure was directed toward his destruction.¹⁷ The doctrines of the eighteenth century philosophers succeeded in permitting public opinion so thoroughly that their demands for reform were reproduced in the *cahiers of the États Generaux* just before the outbreak of the revolution.¹⁸

Under pressure of public opinion the government recognized the necessity for a procedural reform and, preparatory to a general revision, abolished, in 1788, some of the worst abuses such as torture, non-motivated sentences, the use of the "sellette," etc.¹⁹ That was the last time the royal power acted in the matter of procedural reform.

The Constitutional Assembly, tackling the question in the fall of 1789, passed a law designed to fill the gap until a general reform of the criminal laws could be completed.²⁰ The temporary measure

¹³Titre XIX of the *Ordonnance Criminelle* of 1670.

¹⁴Montesquieu, *De l'esprit des lois*, Book VI, Chap. 2 and 3; Book XII.

¹⁵Cesare Beccaria, *An Essay on Crimes and Punishments*, especially Chap. XVI.

¹⁶See the analysis of the work of Voltaire in E. Masmonteil, *La législation criminelle dans l'oeuvre de Voltaire*, especially p. 125 et seq.

¹⁷Masmonteil, *op. cit.*, p. 141, quoting from Voltaire's *Traité de la justice et de l'humanité*.

¹⁸See Albert Desjardins, *Les cahiers de États Genereaux; M. Chauvin, De la réform de la procédure criminelle dans les cahiers de 89; Esmein, op. cit.*, p. 404 et seq.

¹⁹Esmein, *op. cit.*, p. 399 et seq.

²⁰Law of October 8-9, 1789, entitled *Décret sur la réformation de quelques points de la jurisprudence criminelle*. See J. B. Duvergier, *Collection complète des lois, decrets, ordonnances, reglements, etc.*, Vol. I, pp. 57-59.

was well thought out. It embodied suggestions for improvement which had grown out of the discussions of the previous decades. Existing institutions were left intact, but guarantees for the individual were devised. Henceforth, two *adjoints* (laymen of good reputation) were required to assist the investigating magistrate in his preliminary operations preceding the appearance of the accused. When the accused appeared the proceedings were public and contradictory. The accused was permitted counsel who was present during examination of witnesses and had access to all the documents in the case.

Two years later the anticipated general reform was brought about,²¹ consisting of a deliberate sacrifice of all French institutions and a wholesale importation of English criminal procedure. By the law of September 16-29, 1791, the *lieutenant criminel*, the investigating magistrate who was the dominating figure of the old procedure disappeared along with his active associate, the Prosecuting Attorney. In place of the latter, two officials were created, a Commissaire of the King, charged with the duty of seeing that the laws were enforced, and a Public Accuser who appeared in the trial as Counsel for the accusation. The principal figure in the preliminary proceeding became as in England, a justice of the peace (*juge de paix*), an elective official. He was given the power to issue a warrant summoning the accused to appear before him on complaint made to him of the commission of an offense. When the accused appeared, the Justice of the Peace heard him and witnesses and on the basis of this hearing either ordered the accused held for action by the Grand Jury or dismissed the complaint.

But France rapidly discarded the new English procedure in the preliminary investigation in order to resume the procedure to which it had been accustomed for some three centuries. As early as 1795 a tendency to return to the old forms became evident when the principles laid down by the law of 1791 were codified in the *Code des Délits et des Peines* of the third Brumaire, An IV.²² Some provisions in the Code gave the Justice of the Peace a much more active part in the preliminary procedure and ordered the results of his investigations, hearings, interrogations of witnesses and of the accused to be put in writing. These documents, just as in the procedure of the

²¹*Décret en forme d'instruction pour la procédure criminelle*, Duvergier, *op. cit.*, Vol. III, p. 478.

²²Duvergier, *op. cit.*, Vol. VIII, p. 469 *et seq.*

"ancien régime" were to guide the proceedings in the later stages.²³

Revolutionary France took the decisive step back to the criminal procedure of the past by the law of the seventh of Pluviose, An IX. It reestablished the Prosecuting Attorney on the old basis.²⁴ It resurrected most of the functions of the old *lieutenant criminel* and vested them in the Director of the Jury. This official had been created in the 1791 reform to guide the Grand Jury, then established, in the performance of its duties. The new law extended the Director's functions, empowering him to conduct a non-contradictory, secret investigation of offenses for which an indictment by the Grand Jury was a necessary prerequisite to trial.

At the same time, the justice of the peace was limited in his activities to informing the Prosecuting Attorney of offenses within his knowledge; and drawing up the complaints (*prosés-verbaux*) concerning them; and to ordering the capture of offenders in "flagrant délit" and taking their statements when brought before him. He could perform no other act of the procedure unless charged with its commission by the Director of the Jury. He therefore lost the power of conducting the preliminary hearing and the preliminary investigation given him by the earlier laws.

Several conditions account for the return to the old system. France felt as never before the need for an effective repression of crime. In the wake of the political disorders and the wars, she was submitted to a period of widespread criminality. The lack of an effective repression came to be attributed to the new procedure, in which many defects had become apparent. Because the thorough preliminary investigation had been suppressed, cases were badly prepared; and because the useless splitting up of the office of the prosecutor hampered an effective prosecution, cases were badly presented at the trial.²⁵ Frequent miscarriages of justice resulted. Furthermore, the reforms of 1791 had been put into effect because of a desire to safeguard individual liberty. But the excesses of the Revolution caused a reaction in which individual liberty became of less importance than security.²⁶

²³Faustin-Hélie, *op. cit.*, Vol. I, p. 442, sec. 384; Esmein, *op. cit.*, p. 441; Mariotte, *op. cit.*, p. 278.

²⁴*Loi relative à la poursuite des délits en matière criminelle et correctionnelle*, Duvergier, *op. cit.*, Vol. XIII, p. 380 *et seq.* The Constitution of 22 Frimaire, An VIII paved the way for this reform in Article 63 which combined the functions of the old Commissaire of the King, then Commissaire of the Executive Power, and the Public Accuser, into one individual. Duvergier, *op. cit.*, Vol. XII, p. 27.

²⁵Esmein, *op. cit.*, p. 463.

²⁶Esmein, *op. cit.*, p. 450.

By the time Napoleon made himself Emperor, therefore, part of the old procedure was once more the law of France. Napoleon favored the reaction because it increased the powers of the government. There was furthermore a strong current of opinion hostile to the accusatorial procedure of the Revolution. To its members of the judiciary laid the prevailing lack of security in France.²⁷ The point of view of those who approved the older tradition was expressed by the Court of Appeal of Aix: "With the assistance of Counsel for the accused and the publicity of the proceedings, the modified *Ordonnance Criminelle* of 1670 would . . . most closely approach perfection."²⁸

Under such influences, the commission appointed by Napoleon to codify the criminal procedure established more definitely the reintroduction of certain inquisitorial elements into French practice. Since the Commission eliminated the Grand Jury, the Director disappeared too. But the Commission took his powers in the investigation of an offense and vested them in a new official, the *juge d'instruction*, who was to have no other function. The *juge d'instruction* was given the wide powers he possesses today in pursuance of the theory which would give to the investigation of an offense and the obtaining of evidence the judicial guarantee of impartiality. The *Code d'Instruction Criminelle* which resulted from the labors of Napoleon's Commission, adopted in 1808, though modified in some particulars, is still the law of France.

The Code showed no concern over the possible abuse of the powers of the *juge d'instruction*. The use of his prerogatives were left entirely to the wisdom and the conscience of the magistrate. But mistakes and abuses were apt to occur since the *juge d'instruction* performed his functions in secret and since the accused was not permitted the assistance of counsel in this stage of the proceeding. Yet from the point of view of the accused, it is of utmost importance that the work of the *juge d'instruction* be performed conscientiously, without prejudice, and with the strictest attention to accuracy. The magistrate's investigation, embodied in the written documents of the dossier determines to some extent the later stages of the procedure. On the basis of the dossier, the accused is made to stand trial. In

²⁷See Esmein, p. 485 *et seq.* The principal tendency was to blame the jury for the evils of the criminal procedure and the principal discussion preceding the codification was on the question of the maintenance of the jury. Of the fourteen questions Napoleon wished discussed, eight related to the jury. See also Marriotte, *op. cit.*, p. 292.

²⁸*Observations des Tribunaux d'Appel sur le projet de Code Criminel*, Vol. I, *Tribunal d'Appel d'Aix*, p. 12; see also observations of the *Cour d'Appel de Bourges*, p. 3; and *Cour d'Appel de Metz*, p. 17.

the trial itself, the President of the Court, in his interrogation of the witnesses and the accused, brings before the jury the evidence the dossier contains. The evidence thus brought out might be denied, but it was inevitably considered by the jury.

The unlimited power of the *juge d'instruction* caused the system of the preliminary investigation to be vigorously criticized throughout the past century. Faustin-Hélie's question, "Should not citizens have any other defense against the acts of the *juge d'instruction* than the character and capacity of the magistrate that orders them?" was typical.²⁹ Napoleon III was induced to appoint a commission, with the great jurist Ortolan at its head to consider revision. The commission was dissolved with the downfall of the empire.

In the early years of the third republic, M. Defaure, Minister of Justice, appointed another commission to consider procedural reform. The resulting project, presented in 1879, proposed a complete recasting of the Code of 1808, the principal feature being the provision of a contradictory investigation before the *juge d'instruction* with the accused represented by counsel and opposed by the Prosecuting Attorney.³⁰ In the course of discussion in the Senate, the Defaure project was so profoundly modified as to lose its original character completely—and its original supporters likewise. It failed of passage. Inability of the proponents of reform to agree among themselves and the political difficulties of successive ministries delayed reform for nearly twenty years.

A number of scandalous abuses which came to public attention in the nineties made reform absolutely imperative. In one case, that of the workman Dufour, the accused was detained in prison five months because the *juge d'instruction* had not found time to interrogate him. In another case, the accused was starved for thirty-two hours and made confessions which were retracted at the trial. In the most significant case, the Pelissier affair, the accused had been kept incommunicado for three months. The *juge d'instruction* told him that his mistress had confessed, and told her, that her lover had confessed. By this double lie, the magistrate obtained confessions of despair. Because of the inanity of the charges, the Prosecuting Attorney abandoned the case at the trial.³¹

It was the law of December 8, 1897, which finally provided for

²⁹Faustin-Hélie, *op. cit.*, Vol. IV, p. 50.

³⁰For a criticism of the Defaure project see Morizot-Thibault, *op. cit.*, p. 364 *et seq.*; Guillot, *Des principes du nouveau Code d'Instruction Criminelle*.

³¹Garraud, *op. cit.*, Vol. III, p. 38, Note 6.

the presence of counsel during the interrogation of the accused by the *juge d'instruction* and the communication to counsel of the documents in the case the day before the interrogation.³² The spirit of the reform is indicated by M. Constans, one of its sponsors in the Senate: "The *juge d'instruction* is like other functionaries. He must be controlled . . . The presence of the lawyer will of itself exercise a sufficiently efficacious action to prevent him from doing anything but his duty."³³

This law did not go the lengths proposed in some of the earlier projects in order to protect the accused. It did not, for example, institute the contradictory preliminary investigation recommended in the Defaure project, since neither the accused nor his counsel is entitled to be present at the examination of witnesses. But by the 1897 law the accused now has important guarantees since he may through his counsel exercise some measure of control over the operations of the *juge d'instruction*. Though the advantages of a thorough preliminary investigation as provided by the inquisitorial procedure are retained, the rights of the individual receive greater protection.

II.

On the basis of the evidence gathered in the preliminary investigation, a decision must be reached as to whether the accused should be held for trial. Even if acquittal results, a trial has serious inconveniences for the individual as well as expense for the state. There ought therefore to be a strong probability of guilt before the accused is compelled to face trial.

In England and in many American states, in serious offenses, the function of sifting out cases in which it is justifiable to hold the accused for trial is performed by the Grand Jury. France, under the prevailing admiration of things English, introduced the Grand Jury by the law of September 16-29, 1791, and for the first time had a separate institution to determine the desirability of a trial.

The *Ordonnance Criminelle* apparently provided no separate agency to make this decision, it being reached by the magistrate charged with the preliminary investigation.³⁴ But on this point the

³²For the history of the law of December 8, 1897, and the prior attempts at reform, see J. Brégeault et L. Albanel, *La réforme de l'instruction préalable*, p. 8 *et seq.*

³³*Idem*, quoting M. Constans, p. 23.

³⁴The *juge d'instruction* of the "ancien régime" in deciding whether a case should or should not be brought before the court, had another decision to make. If the offense was serious enough to merit a corporal penalty (afflictive et infamante) he ordered that the witnesses should be heard again and if neces-

Ordonnance was obscure and the commentators disagree as to its meaning. Jousse and Muyart de Vouglans argued that the same number of judges were necessary to make this decision as were necessary for the trial, that is three or five.³⁵ But there was equally positive authority against this view, Serpillon stating that according to the usage of all the courts the decision as to trial was rendered by the *juge d'instruction* alone.³⁶ Muyart de Vouglans acknowledged that this was the actual practice no matter what the ordinance intended.³⁷

The Grand Jury provided by the law of 1791 differed from its English prototype. It was limited in number to eight citizens. It was provided with a Director, a judge designated to fill this position for six months. He examined the accused and the documents in the case to determine whether the offense was of such a nature that an indictment by a Grand Jury was necessary.³⁸ He could also examine witnesses not heard in the prior procedure before the justice of peace. It was the Director's duty to draft the indictment (*acte d'accusation*) though if the complaining party disagreed with it he could draft another and the Grand Jury was given its choice between the two.³⁹

Originally the French Grand Jury, like the English, heard the witnesses orally and voted or rejected the indictment. But this procedure was soon changed. The law of the seventh of Pluviose, An IX, provided that the Grand Jury was to hear no witnesses but was to reach its decision on the basis of written depositions and other documents in the case.⁴⁰ This was the law which resurrected some of the functions of the *lieutenant-criminel* and bestowed them on the

sary confronted with the accused.—*Titre XV Article 1, Ordonnance Criminelle* of 1670. This was the so-called "reglement à l'extraordinaire." In such cases torture could be employed to extract a confession if the evidence was not already sufficient for a conviction. If the offense was not serious and not punishable by a corporal penalty and if it was prosecuted on behalf of a private individual, the *lieutenant criminel* could order that the procedure take place "à l'ordinaire," in which case the ordinary civil procedure was followed. The procedure à l'ordinaire was all that remained of the accusatorial procedure in the *Ordonnance Criminelle*.—See Muyart de Vouglans, *op. cit.*, p. 271 *et seq.*

³⁵D. Jousse, *Commentaire sur l'Ordonnance Criminelle de 1670*, p. 296; Muyart de Vouglans, *Les lois criminelles de France*, p. 644, sec. IV.

³⁶Francois Serpillon, *Code criminel ou Commentaire sur l'Ordonnance de 1670*, Vol. I, p. 690.

³⁷Muyart de Vouglans, *loc. cit.*

³⁸Only offenses punishable by "peines afflictives et infamantes" required the indictment by a Grand Jury as a pre-requisite to trial.

³⁹See R. Descharmes, *L'information préparatoire et le jury d'accusation*, p. 140 *et seq.*

⁴⁰*Idem*, p. 199 *et seq.*

Director of the Jury. It was natural, since the Director was to examine the witnesses and take their depositions, to limit the Grand Jury's consideration to these depositions and the other written documents.

The *Code d'Instruction Criminelle* which emerged from the hands of Napoleon's commission in 1808 suppressed the Grand Jury entirely. In view of the opinion in America that the Grand Jury ought to be abolished,⁴¹ the reasons for its disappearance in France are of special interest. In the first place the French magistrate experienced the difficulty of transmitting to a group of laymen the idea that their function was not to decide upon the guilt of the accused but merely to determine whether the evidence was sufficient to hold the accused for trial. Lacking enough evidence to justify a conviction the Grand Jury dismissed too many well founded prosecutions. Where the Director sought to avoid this situation by trying to give the members of the Grand Jury a clearer idea of their functions, he influenced their decision to such an extent that the Grand Jury became simply a rubber stamp of its Director.⁴²

In eliminating the Grand Jury the present code provided two other agencies to take its place: the *Chambre de Conseil* and the *Chambre de Mises en Accusation*.

Three judges, members of the same Tribunal as the *juge d'instruction*, constituted the *Chambre de Conseil*. To it every week the *juge d'instruction* presented a report of the affairs which he had concluded. The *Chambre de Conseil* decided whether there was sufficient basis for holding accused for trial. If the offense was a *délit* or a *contravention*, the *Chambre* could order the case brought before the appropriate court. But if the offense was a *crime* the vote of any one of the judges composing the *Chambre de Conseil* was sufficient to bring the case before the *Chambre de Mises en Accusation* which alone was competent to decide whether the accused could be brought before the *Cour d'Assises*.⁴³

⁴¹See National Commission on Law Observance and Enforcement, Report on Prosecution, Report by Alfred Bettman, Criminal Justice Surveys Analysis, pp. 124-125, and Report of the Commission, p. 34. See also the Model Code of Criminal Procedure prepared by the American Law Institute, Sec. 113, p. 59.

⁴²See Report of M. Le Comte Faure presented before Napoleon's Commission, November 29, 1808, in Locré, *La Législation Civile, Commerciale, et Criminelle de la France*, Vol. 25, pp. 564-565. See also, on p. 245, the opinion of M. Treilhard: "The Grand Jury as it exists today has not responded to the hopes that were entertained when it was established. A prosecution that should not be interrupted is too frequently prevented by too indulgent and thoughtless declarations of the Grand Jury . . ."

⁴³*Ancien Article 133, Code d'Instruction Criminelle*.

The *Chambre de Conseil* was suppressed in 1856. Like the Grand Jury, it had apparently fulfilled no useful function. The *juge d'instruction* took part in its deliberations and voted. In practice, therefore, the *Chambre de Conseil* merely registered the opinion of the *juge d'instruction*.⁴⁴

The powers of the *Chambre de Conseil* were transferred to the *juge d'instruction*.⁴⁵ He now decides himself whether the evidence he has gathered justifies holding the accused for trial. If the offense is a *délit*, he brings it before the Correctional Court. But if the offense is a *crime*, the decision of the *Chambre de Mises en Accusation* is still necessary to bring the accused before the *Cour d'Assises*.

The *Chambre de Mises en Accusation* is composed of three judges of the Appeal Court. They reach their decision as to whether the accused should be brought before the *Cour d'Assises* on the basis of the documents contained in the dossier, a report of the Prosecuting Attorney (*Procureur Général*) and a report made by one of themselves. The *Chambre de Mises en Accusation* hears no witnesses and the accused has no right to appear before it. He may however submit a written brief.

The *Chambre de Mises en Accusation* is therefore the only separate agency in French criminal procedure which determines whether the evidence is sufficient to justify holding the accused for trial. It differs most widely from the American or English Grand Jury in the fact that it is composed of judges and not of laymen and that it reaches its decision on the basis of written documents. Its existence offers a guarantee to the accused in the offenses triable before the *Cour d'Assises*, since it does not permit the same individual who gathers the evidence to decide whether it is sufficient to hold the accused for trial.

III.

Under the *Ordonnance Criminelle* of 1670, the trial, like all other stages of the proceedings, was secret. The accused was unrepresented by counsel. The Court reached its decision on the basis of (1) a report made to it by a reporter who had examined the depositions of the witnesses and all the documents gathered in the first phase of the investigation; (2) the conclusions of the Prosecutor,

⁴⁴Garraud, *op. cit.*, Vol. III, p. 302; Morizot-Thibault, *op. cit.*, p. 130.

⁴⁵There are some writers who would like to see the *Chambre de Conseil* reintroduced into French procedure. They would, however, reorganize it and give it wider powers. See Morizot-Thibault, *op. cit.*, p. 505 *et seq.*; Garraud, *loc cit.*

read after the reporter was heard; (3) a last interrogation of the accused on the "sellette," by the Court; and (4) the written documents resulting from the preliminary investigation.⁴⁶ If the dossier fulfilled the conditions for a complete proof under the system of legal proof, then the Court was compelled to pronounce the conviction, no matter what its personal appraisal of the value of the evidence might have been.

The Revolutionary laws completely upset this system. Publicity of the trial replaced the secrecy of the inquisitorial procedure. The accused was allowed counsel and full facilities for the presentation of his defense. The principle was established that judgments must be made on the basis of oral evidence and not on the basis of the written documents in the case. The system of legal proof was abolished. Its suppression had been advocated by the eighteenth century philosophers and was rendered inevitable with the introduction of the jury. A learned system of proofs could only be applied by judges; not by a group of laymen called upon to find the facts. The value of evidence ceased to be fixed in advance. All that the law of France demanded of the jury was that its decisions be based upon "an intimate conviction"⁴⁷ reached as a result of the evidence presented in open court.

These principles passed into the code of 1808 and have been maintained down to the present day. But the institutions and practices to which they have given rise in France differ radically from those developed under the influence of the same principles in Anglo-American law.

In the first place, the Revolutionary Constitutional Assembly established the tri-partite division of offenses into "crimes," "délits" and "contraventions" in contradistinction to the traditional bi-partite division of offenses into felonies and misdemeanors of the Anglo-American law. The Assembly provided a separate court for each class of offense. This arrangement is at the basis of present court organization. Petty offenses (contraventions) are tried before a justice of peace, as in England. "Délits," offenses which would roughly correspond to the most serious misdemeanors and the lesser felonies, are tried in the Correctional Court (*Tribunal Correctionnel*)

⁴⁶Mariotte, *op. cit.*, p. 124; Muyart de Vouglans, *op. cit.*, p. 357 *et seq.* The *Ordonnance Criminelle* did not settle the important question of who was to be the reporter. Usually the same judge who conducted the preliminary investigation also made the report. As the court ordinarily reached its judgment according to the report, the entire process was practically left to the discretion of the investigating magistrate.—Esmein, *op. cit.*, p. 233; Mariotte *op. cit.*, p. 125.

⁴⁷*Code d'Instruction Criminelle*, Article 342.

consisting of three judges. "Crimes," the most serious offenses, are tried by the *Cour d'Assises*, the only criminal court in France which uses a jury.

As originally established, in 1791, the Correctional Court consisted of three justices of the peace who were individually competent in petty offenses. The Code of 1808 modified this arrangement. The Commission on the codification of criminal procedure fulfilled Napoleon's desire for the formation of powerful tribunals through the concentration of civil and criminal justice in the same hands, wiping out the special criminal courts established by the Revolution. A civil court was established in each *arrondissement*, and was made competent to try "délits" as a Correctional Court. The *arrondissement* is no longer the geographical unit,⁴⁸ but the practice of having three judges of the Civil Tribunal sit as a Correctional Court is still maintained.⁴⁹

The 1791 reform permitted the use of a simple and rapid procedure in the Correctional Court on the theory that the offenses within its competency were of secondary importance, simple in character and easy of proof. "Délits" were not thought to be of sufficient importance to necessitate extraordinary guarantees for the accused, the participation of three judges and the right of appeal being considered enough.⁵⁰ The original characteristics of the Correctional Court procedure have been retained.

But the jurisdiction of the Correctional Court has been gradually extended until today it is the one general criminal court in France,⁵¹ and the offenses which it considers are much more serious in character than formerly. In the early years of its existence it was limited to offenses punishable by imprisonment of not more than two years. Its competency was extended by the Code Pénal of 1810 to offenses punishable by not more than five years imprisonment.⁵² The competency of the Correctional Court has been much further extended by the practice known as the "correctionalization" of offenses.

Many offenses ordinarily within the jurisdiction of the *Cour d'Assises* are brought before the Correctional Court by the simple

⁴⁸Roux, *Cours du droit criminel français*, pp. 75-77.

⁴⁹The primary organization of the courts contained many disadvantages. The courts were too numerous and their judges were not of sufficient rank to assure an adequate functioning. See Garraud, *op. cit.*, Vol. IV, pp. 544-545.

⁵⁰Faustin-Hélie, Vol. VI, Sec. 2750, p. 441 *et seq.*

⁵¹For example, in 1928, the *Cours d'Assises* tried 2,310 cases and the *Cours Correctionnelles*, 212, 628. *Compte General de l'administration de la justice criminel*, 1928.

⁵²By article 40 of the *Code Pénal*, the prison penalty in the case of *délits* may be from six days to five years.

expedient of leaving out certain of the aggravating circumstances of the offense. For example, in order to try a burglary, which should be heard by the *Cour d'Assises*, before the Correctional Court, the circumstances of breaking and entering are omitted in the charge and the accused is held to answer for a simple theft which is within the competence of the Correctional Court.

For many reasons the practice of correctionalization is popular with prosecuting attorneys. They prefer to bring cases before the inferior court because cases may be more quickly disposed of and because the expenses of an investigation by the *juge d'instruction* and of a jury trial can be saved. In addition, the jury has shown itself too lenient in certain offenses, of which the "crime passionel" is the classic example. Bringing such cases before the Correctional Court insures a greater possibility of obtaining a conviction.⁵³

In view of the wide extension of the competency of the Correctional Court, the survivals of the inquisitorial system in its procedure take on greater importance. The principle that judgment must be based on oral evidence presented in open court is not strictly followed since, although the Court is obliged to hear witnesses, it may also take the written documents in the dossier as one of the bases for its decision.⁵⁴ But the law does not require that the dossier of a *délit* be prepared by a *juge d'instruction*. In the large majority of cases the dossier is prepared by the Prosecuting Attorney as a result of his own investigation of the case.⁵⁵ This makes the procedure of the present day Correctional Court even more rigorous for the accused than the inquisitorial procedure of the "*ancien régime*." Then, at least in theory, the written documents on the basis of which judgment was had were prepared by an impartial magistrate and not by the prosecutor, the opponent of the accused.

It is in the *Cour d'Assises* that French criminal procedure has retained most completely the imprint of the revolutionary reforms. Only in this Court is there a jury, and here the principles of orality

⁵³On the practice of correctionalization see Garraud, *op. cit.*, Vol. II, p. 321 *et seq.*; the introduction to the book by Jean Cruppi, *La Cour d'Assises*, p. 3 *et seq.*; B. Perreau, "*A propos d'une pratique judiciaire illicite*," in *Revue critique de législation et de jurisprudence*, Vol. 50 (1930), pp. 441-450.

⁵⁴Garraud, *op. cit.*, Vol. IV, p. 610.

⁵⁵This practice is known as an "enquête officieuse," as contrasted with the legal investigation by the *juge d'instruction*. It must also be pointed out that a certain percentage of cases are brought before the Correctional Court directly by the injured party. In addition, certain governmental administrations, e. g., customs, have the right to prosecute directly offenses against the interests confided to their care. Nevertheless, the large majority of cases are prosecuted by the Prosecuting Attorney.

and publicity of the proceedings and of full opportunity for defense are given their widest application. Nevertheless the persistence of certain traditions of the "*ancien régime*" are still to be seen, especially in the interrogation of the accused and in the dominating part played by the President of the Court.

In the trial procedure under the "*ancien régime*," the accused was always submitted to a last interrogation by the Court before judgment was pronounced. The Court seems never to have abandoned the practice of interrogating the accused, even during the period of the Revolutionary reforms. At the présent time the almost invariable practice of presidents of the *Cours d'Assises* is to question the accused severely and at length before the witnesses are called. The defendant is interrogated in detail as to all the circumstances of the crime and as to his past life. The questions are based on material in the dossier which contains the results of the preliminary investigation by the *juge d'instruction*. Thus, by the interrogation, the President of the Court brings before the jury in open court the findings of the earlier, secret investigation.

In no text of the present code is there any specific authorization for the President's power of interrogation, and French commentators are not agreed as to its basis. Faustin-Hélie observes that it is a last vestige of the inquisitorial procedure.⁵⁶ Other writers insist that the power of interrogation results from the duty imposed upon the President to expose the case to the jury,⁵⁷ the *interrogatoire* being one of the most natural methods of bringing out the truth.⁵⁸ Still other writers find a basis in the discretionary power given the President to take whatever measures he believes necessary to bring out the truth in the trial.⁵⁹

The commentaries on the Code and the texts on criminal procedure require that the President maintain an impartial attitude during the *interrogatoire*.⁶⁰ But the casual visitor to the Paris *Cour*

⁵⁶Faustin-Hélie, *op. cit.*, Vol. III, p. 655. His view is supported by Cruppi *op. cit.*, p. 76 *et seq.* See also Cruppi's report in *Revue Pénitentiaire*, Vol. 34 (1910) pp. 316-327, and the discussion thereon, particularly the remarks of Le Poittevin, p. 335, and Garçon, p. 474.

⁵⁷Article 267, and also Articles 319 and 327 of the *Code d'Instruction Criminelle*.

⁵⁸Roux, *op. cit.*, Vol. II, p. 391. See also Le Poittevin, *op. cit.*, Vol. II, p. 26.

⁵⁹Article 268 of the Code gives discretionary power to the President. See comments of Garraud, *op. cit.*, Vol. II, p. 231, and authors cited by Roux, *op. cit.*, Vol. II, p. 391, note 3 in his criticism of the view that the power of interrogation is derived from the discretionary power.

⁶⁰Roux remarks, "In the exercise of his powers, the President of the Assizes must observe the greatest impartiality in order not to hinder the defense. He

d'Assises is struck by the fact that the President leaves the jury little doubt as to his personal opinion of the case. A number of striking instances of partiality led to the suppression in 1881 of the résumé which the 1808 Code originally ordered the President to make before the jury began its deliberations.⁶¹ But the President can still make strong expressions of opinion during the interrogation without fear of having the judgment reversed in the Appellate Court (*Cour de Cassation*).⁶²

There were no precedents for the jury in the inquisitorial procedure of the "*ancien régime*." The French reformers took the institution directly from England. Adopted in 1791, the jury is still an integral part of French criminal procedure. But the jury did not pass into the present code without a considerable struggle. Napoleon was opposed to the retention of the institution. Since his commission on codification did not agree with him, he adjourned its session hoping that a period of reflection might bring a change of sentiment. But when the commission resumed its work several years later, it was still determined that this particular guarantee for the accused should remain in the French procedure.⁶³ But in two important respects, in its method of rendering a verdict and in the number of votes required for a conviction, the French jury differs from its English model.

is not an accuser. He is not even a judge. He is a director of the jury . . . He must therefore abstain from influencing their vote in any manner and not let fall any remark which indicates his personal opinion with reference to the accused." *Op. cit.*, Vol. II, p. 379.

⁶¹Law of June 19, 1881, abrogating the old article 336 of the Code of 1808.

⁶²A President terminated his interrogation with the following words, "You, Gerard, like Passieux, merit the most severe punishment." The *Cour de Cassation* upheld the conviction. Similarly, where a President observed to the jury "In my long career as a magistrate I have never seen a case as abominable as this one," the conviction was sustained. See Le Poittevin, *op. cit.*, Vol. II, p. 132, Sec. 6. In a recent case, in which the accused persisted in her denial of the killing, the President observed in the course of interrogating her, "You killed your mother-in-law, organizing about her body a *mise-en-scène* which is beyond the bounds of probability." See Le Matin, January 26, 1932, case of Clementine Sandral. For other examples of captious interrogations and prejudicial remarks of the President of the *Cours d'Assises*, see M. Lailier et H. Vonoven, *Les erreurs judiciaires et leurs causes*, p. 150 *et seq.*

⁶³Esmein gives a good summary of the discussion on the retention of the jury, *op. cit.*, p. 485 *et seq.* Most of the courts of appeal and a large number of the trial courts were opposed to it. The jury, it was said, was composed of ignorant and inexperienced citizens and could not properly fulfill its functions. The jury too frequently gave way to its passions. Citizens did not like to serve on the jury and avoided it whenever possible, etc. Nevertheless, the partisans of this institution were able to secure its retention although as has been seen above, the Grand Jury was abandoned. The principal reason for the maintenance of the jury was perhaps that trial by jury provided a very substantial guarantee for the accused. See also Charles Clauss, *Le jury sous le Consulat et le Premier Empire*, Chap. III, p. 47, and Chap. IV, p. 69.

The jury in France does not render a general verdict of guilty or not guilty as is the case in America and in England. Instead the jury presents "yes" or "no" answers to a series of questions put to it in writing, and covering all the charges and all the modifying circumstances contained in the indictment or developed in the course of the trial as well as all the defenses or excuses invoked by the accused. The finding of a French jury therefore resembles the special verdict in Anglo-American procedure.

The questions to the jury constituted the method taken by the Revolutionary legislators to put into effect the English principle that the jury shall be competent to decide matters of fact and the Court matters of law. The 1791 reform, establishing the jury, provided that it must answer three questions: (1) was the crime committed; (2) was the accused the author and (3) did the accused act culpably. The *Code des Délits et des Peines* in the Year IV developed the system of questioning. But by increasing the number of questions to be put to the jury it complicated rather than clarified the situation. Within Napoleon's Commission there was a strong movement to limit the jury to a simple verdict of guilty or not guilty. But the suggestion failed to carry and the Code of 1808 followed Revolutionary precedents in providing the present method of rendering the verdict.

Only once in its history did French criminal procedure require the jury to return a unanimous verdict for acquittal or conviction.⁶⁴ Even this law was tempered by the provision that if the jury could not achieve unanimity within twenty-four hours, then a majority verdict would suffice. The measure constituted an effort to avoid the effects of the original law regulating the jury's verdict, which, it was said, allowed too many criminals to escape since ten votes were required for a conviction, and three votes for the accused led to his acquittal. Delaying a majority verdict by twenty-four hours came to be considered a waste of time. The Code of 1808 therefore established the sufficiency of a majority vote for a verdict. The Code stipulated, however, that where there was simply a majority vote against the accused, the Court could also vote on the question of culpability. If the majority of the judges and jurors was in favor of the accused he was acquitted. In 1831, the participation of the judges was abrogated, but a majority of "more than seven votes" was required for a conviction.⁶⁵ The present system, establishing the

⁶⁴The law of 19 Fructidor, An IV.

⁶⁵Former Article 351 of the Code of 1808 abrogated by the law of March 4, 1831,

sufficiency of a simple majority for either acquittal or conviction was adopted in 1853.⁶⁶

In addition to these differences in the method of voting and rendering a verdict, the French jury diverges in another respect from its English model. The French jury has considerable power in the determination of the penalty, a power which is generally denied to the jury in England. Since 1832 the French Code requires the judge to ask the jury whether or not extenuating circumstances exist in favor of the accused. If the answer is in the affirmative, the Court is compelled to mitigate the penalty.⁶⁷ A law which has just been passed gives the jury an even greater power. It provides that after the jury has found the accused guilty, the jury will deliberate and vote with the Court on the question of the penalty which is to be inflicted.⁶⁸ This provision in effect makes the jury the master of the penalty. It is clear that it is a serious modification of the principle that the Court shall be competent to decide matters of law and the jury matters of fact.

IV.

The effect of political ideas upon criminal procedure is clearly shown in the French development. Under the absolute monarchy, the inquisitorial procedure left the individual helpless in the hands of judicial authority. The Revolution, proclaiming the Rights of Man, surrounded the individual defendant with the guarantees of the accusatorial system imported from England. The dictatorial government of Napoleon, aided by the fact that the disorders following the Revolution made the new system of procedure appear to be unable to give any social security, brought about a return to the forms of the "*ancien régime*." But some of the revolutionary ideas had taken root. The Code of 1808 therefore, is a combination of the inquisitorial preliminary investigation with a trial procedure which is essentially accusatorial.

Though Napoleon's dictatorial government was short-lived, France went through three revolutions in the nineteenth century before it established the basis for the liberal political system which exists today. But the French Code of criminal procedure has remained substantially as Napoleon left it. After 1808, the question of criminal procedure figured less prominently in the problem, of

⁶⁶For the history of these changes see Roux, *op. cit.*, Vol. II, p. 409, note 8; and Garraud, *op. cit.*, Vol. IV, p. 401, sec. 1400.

⁶⁷Article 371 of the present code. In its present form the article dates from 1853 when the original article voted in 1832 was modified.

⁶⁸See *Journal Officiel*, March 7 and 8, 1932. See Vol. 64, No. 57, p. 2490, for the text of the law.

political liberty. It took nearly a century of agitation before the severity of the 1808 code was relaxed sufficiently to allow the accused the assistance of counsel in the preliminary investigation.

It is the opinion of many French legal scholars and publicists that the system of criminal procedure needs to be liberalized still further. The late Professor Garçon observed, "France has completely changed its public law. A government of liberty has replaced a government of authority. We have introduced into our laws political liberty with cabinets responsible to parliament, freedom of speech and association. But we have kept our old penal laws. Do not be astonished if they cannot be conciliated with the ensemble of our institutions. . . . The Republic cannot conserve the *Code d'Instruction Criminelle* of the monarchy . . ." ⁶⁹

Much in this spirit, some writers object to the fact that in the preliminary procedure, individual liberty is left so completely at the mercy of a magistrate. Whatever their opinion of the wisdom and sense of duty of the *juge d'instruction*, they believe that more extensive guarantees for individual liberty should be specifically provided by law. ⁷⁰

Some commentators desire a complete revision of the role of the *juge d'instruction* and a change in the character of the preliminary investigation. They would provide a contradictory preliminary hearing before the *juge d'instruction* similar to that provided by the Dufaure project to take the place of the present preliminary investigation. Witnesses would be examined in the presence of the accused and the prosecuting attorney. Publicity would replace the theoretical secrecy of the present investigation, a secrecy which is violated daily by the newspapers. The *juge d'instruction* would in this new procedure, have a role similar to the English judge in the preliminary hearing. ⁷¹

Reforms are also demanded in the other stages of the procedure. Many writers find excessive the power of the *juge d'instruction* to decide whether a prosecution is justified since it is he who has gathered the evidence. It is true that in the case of "crimes" his decision is submitted to the control of the *Chambre de Mises en*

⁶⁹Emile Garçon, during discussion of report of Cruppi, *op. cit.*, *Revue Pénitentiaire*, Vol. 34 (1910), p. 476.

⁷⁰See for example the report of Professor Larnaude on *Les garanties de la liberté individuelle*, *Revue Pénitentiaire*, Vol. 25 (1901), pp. 184-214, especially p. 199 *et seq.*; and A. Gigot, *Des garanties de la liberté individuelle*, *Revue Pénitentiaire*, Vol. 27 (1903), pp. 1070-1082.

⁷¹See report of Maurice Garçon, *Faut-il modifier les lois sur l'instruction contradictoire*, *Revue Pénitentiaire et de Droit Pénal* (1928), pp. 137-148, and discussion, pp. 148-168, 200-233.

Accusation. But most of the offenses in which the *juge d'instruction* acts are *délits* and here he is subject to no control over his decision as to prosecution. To correct this situation, it is proposed to resurrect the *Chambre de Conseil*, reorganize it, and make possible the consideration of the decision of the *juge d'instruction*.⁷²

Dissatisfaction with the present situation in respect to the Correctional Court is summed up in Garraud's observation. "It is certain that the actual organization no longer responds either to the necessities of an adequate repression of crime or a proper administration of justice."⁷³ Projects for reform are concerned principally with the organization of the Correctional Courts, but they almost inevitably involve changes in procedure. A number of projects recommend the participation of laymen in the judgments of the Correctional Court by means of "echevinage," which joins to the Court a small number of citizens, or by means of the establishment of the jury in the Correctional Court. There is also some sentiment in favor of suppressing the three judges and substituting a single judge.⁷⁴

In the procedure of the *Cour d'Assises*, the abuse of the *interrogatoire* by the President, and the controversy as to its legal basis has led to a significant movement in favor of its abolition.⁷⁵ Such a step would change considerably the physiognomy of a trial and would certainly add to the guarantees for the accused.

It cannot be said that there is any substantial unanimity with respect to any of these reforms. Just such a failure to agree delayed reform during the decades preceding the 1897 law. Nor does there seem to be any widespread public demand for reform. The ordinary citizen is usually uninterested in the question of whether or not the measures taken to combat the criminal are arbitrary or otherwise. It will take some cases of sensational abuses, bringing home to the citizen the unnecessary suffering that may be caused by a system which inadequately protects individual rights before the movement for reform will receive any effective impetus.

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⁷²See authors cited in Footnote 45.

⁷³Garraud, *op. cit.*, Vol. IV, p. 649.

⁷⁴See Garraud's presentation and criticism of the various projects of reform, Vol. IV, p. 652 *et seq.*

⁷⁵See writers cited in Footnote 56.

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