

# REPORT

TO THE

SECRETARY OF STATE FOR THE HOME DEPARTMENT

ON THE

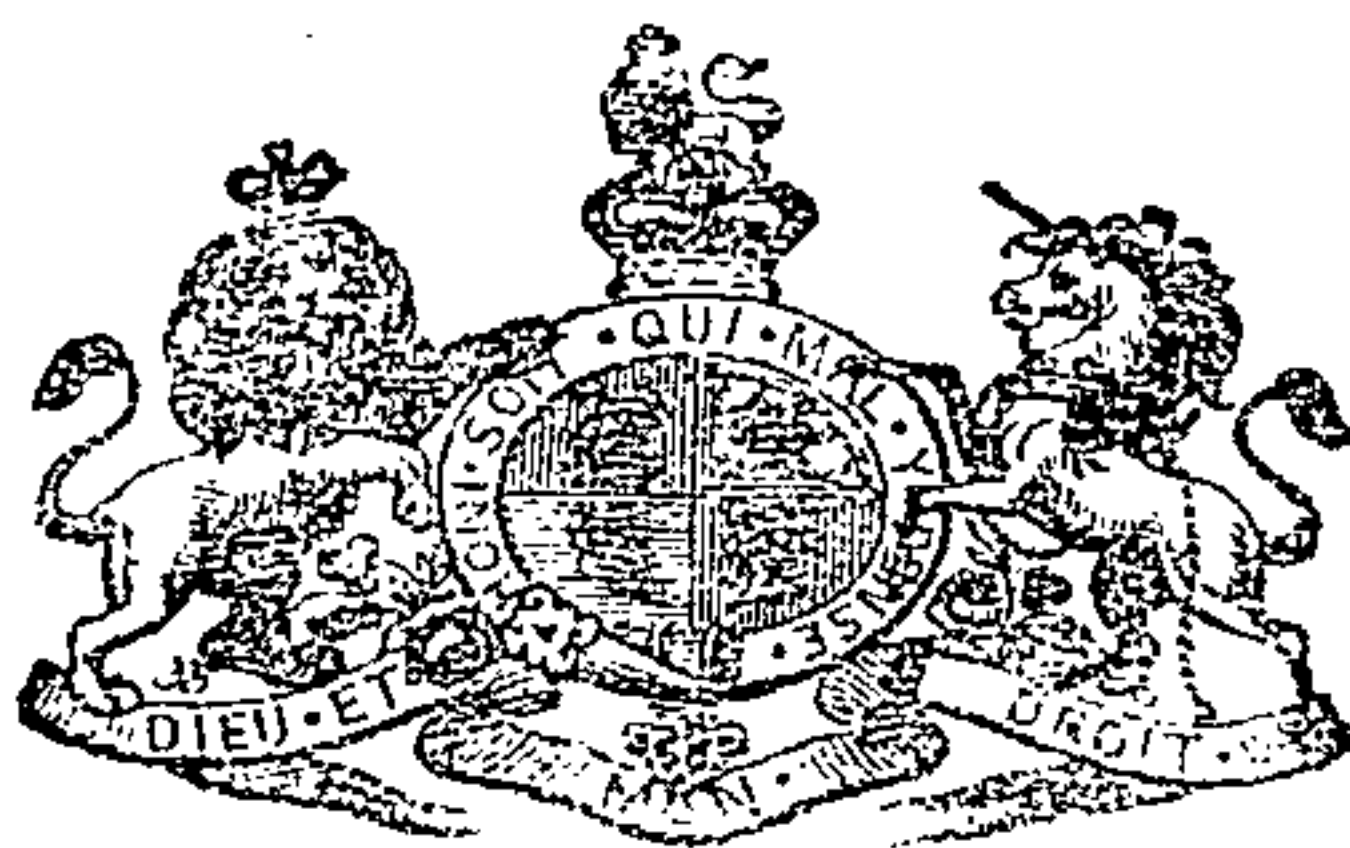
PROCEEDINGS OF THE FOURTH CONGRESS  
OF CRIMINAL ANTHROPOLOGY,

Held at Geneva in 1896;

BY

MAJOR ARTHUR GRIFFITHS,

H.M. INSPECTOR OF PRISONS.



LONDON:

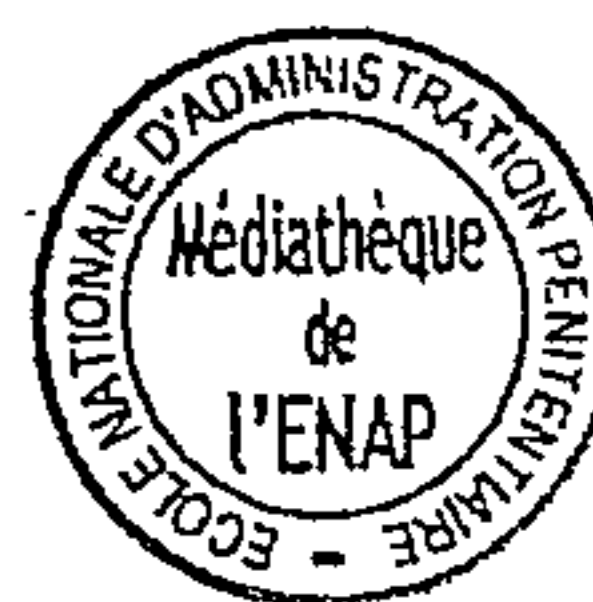
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PRINTERS TO THE QUEEN'S MOST EXCELLENT MAJESTY.

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## INTRODUCTION.

THE Fourth Congress of Criminal Anthropology was held at Geneva, between the 24th and 29th August, both dates inclusive, and was very largely attended. I was present on behalf of the Home Office as well as of the Scotch and Irish Prison Departments, and watched the debates and discussions very closely. My report thereon with certain remarks and conclusions suggested by the proceedings will be found in the following pages.

The papers read to the Congress, and the animated discussions to which they gave rise, covered a wide range; they often indeed travelled beyond the business that had brought the members together. From the starting point of the alleged "criminal type" the Congress passed to the consideration of such topics as mental responsibility, imputability, degeneracy, the proper treatment of criminals, the scope of penal law, the right to punish offenders, the classification of prisoners, the growth and prevalence of new forms of crime. While much of the matter adduced was new, original, and not seldom based on daring theories, the deliberations of the Congress were always interesting and instructive. Every civilized nation was represented, in many cases by men of European, indeed, of world-wide, reputation. Professor Lombroso, the father of the Science of Criminal Anthropology, took an active part in the proceedings, and he was strongly supported by other Italian savants. France sent a strong contingent of administrators, legists, medico-legists, and alienists, Germany was well represented, so were Belgium, Holland, Spain, Brazil, Roumania, and Japan.

The meetings were held in the *aula* or lecture hall of the Geneva University, under the auspices of the most prominent personages in that city, and the welcome given to the Congress was in every respect cordial and flattering.

ARTHUR GRIFFITHS.

Home Office, Whitehall,  
October 1, 1896.

## REPORT.

The science of Criminal Anthropology, which, with many cognate subjects, was debated at the Congress, has been defined as the natural history of the criminal man. Its founder and inventor was Dr. Cesare Lombroso, as is, no doubt, generally known; a distinguished Italian savant, who, while devoting himself to various branches of medical and biological science, was greatly struck by curiously recurring phenomena among the Italian prisoners who came under his notice. He then undertook a series of investigations, which extended over many years, and ended in his propounding a theory that a particular type of man existed, which he called the criminal type, and which was that of a peculiar being physically predestined to crime.

Definition of  
criminal  
anthropology.

This original and startling discovery was favourably received, in Italy especially, where a Lombroso school was soon established numbering many gifted pupils and partisans. The new school showed great vitality, and made such rapid progress that its very growth, apart from its pretensions, roused considerable opposition. Dr. Lombroso's theories and conclusions were not everywhere readily accepted. They have, indeed, met with strong protest, and have evoked much controversy. At the first Congress of Criminal Anthropology, held at Rome, in 1885, the science was too young and too imperfect to be very critically discussed; at the second, however, in Paris, in 1889, the sense of the meeting was hostile, and to such an extent that the Italians abstained in a body from the third Congress, at Brussels, in 1892. At this last, the fourth Congress, just held in Geneva, they were present in full force, and, with Lombroso at their head, were as keen as ever in the defence of their views. For the so-called science was much attacked, and the debates were occasionally warm. In the end no definite conclusion was arrived at. Everyone held pretty well to his own previous opinions, and in a measure agreed to differ. But some of the views put forward were of an interesting character, not on the main questions only, but on other collateral issues, and I propose now to give some account of what passed at the Congress.

Its origin.

Various con-  
gresses held.

I will take first the arguments of the Lombroso school as originally enunciated, next their modification or development after further research or in answer to opponents, and, lastly, the consequences, the uses, good or bad, immediate or remote, that may depend upon the adoption of the Lombroso theories. The ground traversed rests upon a rather technical basis; the data are very largely anatomical and physiological, and, as such, are somewhat beyond my province, but I shall deal with the subject chiefly in its general and practical aspect.

That of Geneva.

Lombroso's first work.

Lombroso's great work, "L'Uomo Delinquente," appeared in 1876, just 20 years ago, and embodied a great mass of elaborate and painstaking work carried on for many years previous, during which he had devoted himself to the most careful examination of criminals. The result of these investigations was the conviction that criminals exhibited, as compared with normal persons, so many anatomical and physiological anomalies that they constituted a separate and distinct genus of the human species. To this genus or type he gave the now famous name of "Born or Congenital Criminal," indicating thereby an unfortunate creature predestined by his inalienable congenital traits to prey upon his fellows, and thus irresistibly impelled to crime. This type is called, and is often known, especially in this country, as the "instinctive" criminal.

The criminal type.

The picture drawn by Lombroso of this human monster was to be recognised by certain distinctive traits, not all displayed alike by the same individual, but their appearance in conjunction to any considerable extent constituted the type. These traits are said to be as follows:—

Anatomical traits.

Various brain and cerebral anomalies; receding foreheads; massive jaws; prognathous chins; skulls without symmetry; ears long, large, and projecting (the ear *ad ansa*); noses rectilinear, short, square, and often twisted; pallor of the skin; frequent wrinkles, strongly marked, even in the young, and in both sexes; hair abundant on the head, scanty on the cheeks and chin; eyes feline, fixed, cold, glassy, ferocious; bad repellent faces. Much stress is laid upon the physiognomy, and it is said that it is independent of nationality; two natives of the same country do not so nearly resemble each other as two criminals of different countries. Other peculiarities are: great width of the extended arms (*l'envergure* of the French); extraordinary ape-like agility; left-handedness, as well as ambi-dexterity; obtuse sense of smell, taste, and sometimes of hearing, although the eyesight is superior to that of normals. Insensibility to pain is another peculiarity claimed for the criminal, as well as disvulnerability, in the sense of a tendency to rapid healing of wounds, and some curious and remarkable cases of both are quoted in the various works on the subject. "In general," to quote Lombroso himself, "the born criminal has projecting ears, thick hair and thin beard, projecting frontal eminences, enormous jaws, a square and protruding chin, large cheek bones, and frequent gesticulation."

Psychological.

So much for the anatomical and physiological peculiarities of the criminal. There remain the psychological or mental characteristics, so far as they have been observed. Moral insensibility is attributed to him, a dull conscience that never pricks, and a general freedom from remorse. He is said to be generally lacking in intelligence, hence his stupidity, the want of proper precautions, both before and after an offence, which leads so often to his detection and capture. His vanity is strongly marked, and shown in the pride taken in infamous achievements rather

in personal appearance. He is said to suffer from emotional instability, the *légèreté* of the French, which he betrays in his incapacity for prolonged exertion, his general repugnance to work, in his love of excitement, sensual excess, gambling, drink; he is the child of impulse, an uncontrollable force drives him onward into crime; yet withal he exhibits often a morbid sentimentality, will make pets of birds, cats, rats, all sorts of animals, will suffer from exaggerated emotion, and is often keenly moved by family and domestic affections.

Two other characteristics on which the criminologists have greatly enlarged are the constant use of slang and the very general practice of tattooing among criminals. Neither of these attributes seem to merit more than a passing word. Tattooing is not the fancy of criminals only; it is the height of the fashion in some nations that are not universally criminal, such as the Maoris and the Burmese; it is a very popular decoration with soldiers and sailors of all nationalities, and it is by no means unknown in so-called aristocratic circles. As to the thieves or slang dialect, this is but one more instance of the use of "shop" in conversation, of a special language by the members of a particular profession. Fluency in thieve's slang may rightly be regarded as a proof that those who speak it habitually belong to the criminal fraternity, but it is an acquired language and by no means a congenital trait.

Other characteristics.

No sooner were these data promulgated, with the type they were supposed to constitute, than other scientists joined issue on the facts and the deductions therefrom. The existence of the criminal type was sharply questioned, and more evidence demanded as to the self-evident characteristics by which the "born criminal" was to be recognised and distinguished. The French were among the first to protest; one, M. Topinard, humorously declared that the portraits collected by Lombroso were much what he himself found in his photograph book among the portraits of his friends. "Save and except for the dirt," he wrote, "the recklessness, the weariness, and the misery so often seen, the face of a criminal does not differ from that of an honest man's." In this regard a speaker at the Geneva Congress, a Russian, Dr. Betcherewf, reminded his hearers that photography could never be regarded as a true index of character; the photograph is but a momentary mechanical impression he said, a true portrait is only the result of a sequence of ideas evoked by prolonged observation. M. Tarde, the chief of the statistical bureau in Paris, went further even than M. Topinard. He denied that there existed any outward traits sufficiently clearly marked to designate the criminal and distinguish him from others; it was no more true, he maintained, than that the honest man might be recognised by the converse particular traits. Following out this argument, he reasoned that if the criminal was to be known by his heavy lower jaw, receding forehead, scanty beard, great length of arm, and insensibility

Existence of type denied.

to pain, then the honest man should display a weak jaw, full forehead, thick beard, short arms, and acute sensibility, points of which they have no monopoly. On this question of distinguishing traits, moreover, it was shown by Topinard that the want of symmetry of skulls claimed for criminals is a general rule for all skulls. Dr. Lannois, again, declared that he did not find the projecting ear—the ear *ad ansa*—preponderating among criminals, while it is known that this form of ear is the peculiar characteristic of certain races not criminal; the receding forehead was found by Marro in only 3 per cent. of criminals, as against 4 per cent. of normals; lastly, the ugliness of the criminal nose is denied. Dr. Feré, of the Bicêtre, in Paris, has found that many criminals were really remarkable for their regularity of feature and their handsome persons; and Dr. Magnan, another eminent French savant, refers to some fit to pose as artists' models.

My own observation.

I may be permitted to add here, that, from my own observation, I cannot admit the prevalence of many of the alleged anatomical peculiarities among criminals. It is only a lay opinion, of course, but no special education is needed for the recognition or otherwise of plainly marked physical traits. I have had the advantage of seeing very large numbers of criminals of all categories, month after month, for many years, probably not far from 100,000 annually; and since the evolution of criminal anthropology I have been at great pains to look for traits that should be immediately obvious. I have almost invariably failed to find them. The strong lower jaw, the projecting ear, the receding forehead, the scanty beard, length of arm, and so forth, do not preponderate, so far as I have seen among English criminals. As to other traits, the insensibility to pain, for instance, it has been observed among criminals that they display less sensitiveness than the general population, but not to such an extent as to warrant its description as a marked characteristic of criminality. Disvulnerability has been seen, but not much more than in the case of ordinary patients, and certainly to a less extent than among lunatics as a whole. I am indebted for these opinions last quoted to Dr. Scott, the Medical Officer of Her Majesty's Prison, Holloway, who was a member of the Congress, and from whom I got much valuable advice and assistance. Dr. Scott, on the question of anatomical characteristics, is so far with the Lombrosians that he has found abnormality of palate very frequent among criminals, especially the narrow, high-arched palate, which is a frequently occurring sign of degeneration.

Insufficiency of data for type.

The strongest argument brought against the Lombroso school is that their investigations have been too limited, that their deductions have been made from insufficient premises, that, in short, comparatively few criminals have been examined. "This analytical and biological process," says Dr. Nicolson, "is applied by those who call themselves criminalists to a com-

paratively small group of criminals, and by implication, and even more directly, it is made applicable to criminals generally." The same learned writer, again, condemns the new science because "it seeks to apply to criminals generally the natural history of a few who show exceptional peculiarities." The very name assumed by the science, he contends, is misleading; it cannot be called criminal anthropology, seeing that it has dealt with and studied only a small number of criminals; it is no more entitled to this generic all-embracing title than anthropology would be if it was devoted to two or three races of men, and not to all mankind.

Lombroso's answer, as far back as 1890, was that even then he and his followers had already examined 26,886 criminals, as compared with normal persons. Since that date no doubt his methods have been still more largely applied. Granted that these numbers are larger than was thought, a sufficient number of facts cannot yet be said to have been collected to establish definite conclusions. Moreover, the criminologists themselves do not show complete unanimity; they are not entirely agreed as to the facts elicited. Thus Marro (Italy) says that the capacity of the skull has been found larger in murderers than in others; Manouvrier found it equal, while Lombroso is confirmed by Topinard (in this respect) in finding it both larger and smaller. Again, the criminalists differ as to the height and weight of criminals. Lombroso found them taller and heavier than normals. Dr. Thompson (General Prison of Perth), Virgilio, and Dr. Lacassagne, of Lyons, found them just the reverse. Once more, the *envergure*, the width of the extended arms, is, according to Lombroso, greater than the height of the individual criminal. Topinard denies this. These discrepancies, Lombroso contends, and justly, are probably due to differences in the manner of making the observation; in any case, he is not greatly concerned by them. In a recent work, which contains some of his latest discoveries, he says, "It is urged that other new discoveries contradict mine. I maintain, on the contrary, that they fully confirm mine. Others may show two distinct species, where I have found a single genus. This subdivision of phenomena, that seemed at first sight simple, is only a sign of progress, for the movement ahead is always from the simple to the composite."

Yet numbers examined by Lombroso large.

Discrepancies.

It is but fair to state here that the Lombrosians have never pretended that all criminals exhibit all the criminal traits. They have never gone beyond saying that these particular traits are more largely present, that they are seen in a greater proportion among criminals than normal people. But to accept even this much is surely fatal to the whole theory of the criminal type. If the traits do not show themselves, how is the criminal man to be recognised and distinguished from others? Surely some will escape classification as born criminals and all the consequences thereof.

Not claimed that traits are universal.

Ideas on  
degeneracy.

Another set of ideas formulated by the Italian school are those which would bring the criminal into line with the degenerates, epileptics, and lunatics of everyday life. As to the first, Dr. Maudsley, the great alienist, has said, "I do not see myself why crime should be degeneracy;" and, again, "to say that there is a criminal nature which is defective is one thing, a *true* thing; but to go on to say that all criminals are degenerate, and bear on them the stigmata of degeneracy, is another, and I believe quite a false thing." M. Tarde, on this head, remarks, "Degeneracy, if allied to crime, has become criminal, not through natural affinity or inclination, but because it is too weak to resist the criminal impulsion starting from something else." There can be, in fact, no general rule that degeneracy is allied to crime. It may be allied to the weaker and simpler forms, but there is seldom degeneracy in crimes of violence and those showing dangerous, murderous energy. At the same time, it is unquestionable that many degenerates find their way into prison as criminals, or so-called criminals. This was put admirably before the Congress by Dr. Næcke, of the Hubertusburg Asylum, near Leipzig, who quoted some remarkable figures on the subject. The number of such degenerates varied between 6·4 per cent. in England to between 5·2 per cent. and 32 per cent. in Italy, 10 per cent. and 12 per cent. in Germany, and it seems more than probable that many of these were not fully accountable for their actions when sentenced to imprisonment.

Epilepsy.

Taking next the epileptics, the Italians are satisfied that epilepsy goes hand in hand with congenital or instinctive crime. The statement is based on the researches of Lombroso, Marro, Gonzals, Lucas, and others, who have shown that some characteristics, such as arrested baldness and greyness of hair, are identical in both; it is, moreover, supported by figures showing the existence of from 14 per cent. to 33 per cent. of cases of convulsive epilepsy among criminals. Lombroso finds in both epileptics and criminals the same traits, the tendency to become vagrants, obscenity, idleness, pride in criminal acts, morbid irritability, suspicion, fits of rage, cowardice, and so forth. The anthropological resemblances are, it is maintained, very marked. Moreover, it is pointed out that the provinces in Italy which produce most epileptics give also the largest number of criminals. On the other hand, Dr. Scott believes that the relationship between epilepsy and crime has been overstated by the Lombroso school. Epileptics are, as a rule, liable to strong fits of passion, and in them frequently commit acts of violence that are criminal. Hence there are always epileptics in a prison population, but there is not a very large number of them, nor are the severer forms of epilepsy very commonly seen among criminals.

Insanity.

The theory that crime is due largely to latent insanity is rejected by many experts. It is also denied that so-called

congenital criminals are nearly allied to lunatics. The resemblance between the two classes is not strong. Both may be violent, passionate, morally and physically insensible; it has been urged that both exhibit common physical traits, and both, again, may in many cases be called lower types of humanity than the normal, yet there are very marked differences between the two classes, some of them patent even to the lay observer. Lunatics are agitated, incoherent, melancholy, taking little notice of strangers, nor of each other; criminals in custody will always get together, when possible, to talk and exchange news. They are logical and clear-headed when their own interests are concerned, and they are ready enough to recognise distinctions among each other. They are at least themselves; lunatics are not, or they would not be insane. With them it is a deviation from their normal condition; a derangement that may be more or less temporary, and for which recovery is possible. The criminal is for the most part in the possession of all his faculties, and is fully responsible for all he does and says.

So far as the original position is concerned the Geneva Congress has hardly advanced matters much. As I have said there was no general consensus of opinion either way. Representatives of three or four countries spoke very decidedly against the acceptance of physical and other traits as constituting a criminal type. The views of M. Zakrewsky, the Russian senator, I have given elsewhere (*see p. 15*); he was inclined to laugh at the whole thing, and his ridicule was so openly expressed that it produced a very animated reply from Signor Ferri. Every Russian, however, is not of M. Zakrewsky's opinion. Madame Tsarnowsky, an eminent lady doctor of St. Petersburg, justly esteemed for her scientific knowledge and self-sacrificing labours, has herself applied the Lombroso methods to a large number of Russian females, thieves and prostitutes, as compared with decent peasant girls and ladies of good society, and her conclusions are in favour of the preponderance of anomalies in criminals. In Germany the Lombroso school has found no followers; one of the most learned of famous German doctors, Dr. Næcke, of Leipzig, already quoted, spoke very positively at the Congress against the existence of any criminal type as proved by the exhibition of distinguishing traits. An Austrian, Dr. Hans Gross, Judicial Counsellor at Gratz, who did not address the Congress, but with whom I had some conversation, was also opposed to the theories propounded, or the possibility of their practical application. The French representatives at the Congress were numerous, but they very generally refrained from expressing any opinions on criminal anthropology; it was understood that two—Dr. Lacassagne, the eminent professor of medical law at Lyons, and M. Joly, a well-known writer on criminal topics—were to some extent in accord with Dr. Lombroso, but on that wider acceptance of the science of which I shall speak directly. Professor Van Hamel,

No consensus of  
opinion at  
Geneva.

of Amsterdam, a leader of thought in Holland, gives a qualified adherence to the views of the criminologists, and his authority as a jurist of European reputation entitles him to respect. In Belgium, which was represented by M. Lejèune, a senator and Minister of State, the attitude is cordial but watchful, yet Dr. Dallemague, professor of medical law at Brussels, says in one part of a very thoughtful paper on "Degeneracy and Crime," contributed by him to the proceedings: "We are bound to admit the existence of criminals almost fatally devoted to crime, and who in criminality take the place of congenital degenerates, and are *irreductibles*." The most outspoken of all the opponents at the Congress was the representative of Roumania, who declared positively, as the result of a long practical examination of criminals during life and after death, that he had never discovered any of the traits alleged to exist among them. This distinct and unhesitating statement brought down on him the retort from Lombroso that the criminal characteristics were never seen in any but civilised races, and that therefore if the Roumanians did not exhibit them they must be savages.

English opinion.

As regards our own country, I was not authorised, nor was I in a position, to express any opinion. As I have said already, my own observation, so far as it goes, and exerted purely as a layman, is against the prevalence of the physical traits said to constitute the type. I cannot but think, however, that it might be productive of good to make some medical experiments on the subject, and to collect data on which a decisive opinion might be given as to the value or otherwise of the theories put forward. Criminal anthropology, as we know, has never taken root seriously in this country; the seeming extravagance of its momentous deductions and from such imperfect premises has tabooed it among men of real science, and its consideration has been left too exclusively to those little qualified or competent to deal with it. The question at once arises whether the increased labour that any general system of recording observations would imply can be fairly imposed upon the medical officers of prisons. But there are no doubt many among them who would gladly devote a certain time to the subject in the interests of science. The examination need not occupy much time, and it seems to be greatly facilitated by an invention mentioned by Dr. Lombroso, called the "*Tachianthropometer*," or automatic measurer, designed by Signor Anfosso, an Italian advocate. This instrument appears to be primarily intended for the uses of anthropometry, but it can be applied also to anthropological observations, and by not necessarily expert or scientific hands. By means of this, observations might be made easily on a very wide scale.

Lombroso's tenacity.

Perhaps the most remarkable, and not the least interesting feature of the Congress, was the tenacity with which Dr. Lombroso held to his views. It is impossible to be brought into personal

relations with this distinguished savant without being impressed by his sincerity, and the depth of his convictions. Nothing is likely to shake his profound belief in the truth of his own discoveries. Once in the course of the Congress, when very hardly pressed by certain hostile remarks, he cried, "What do I care whether others are with or against me? I believe in the type. It is my type; I discovered it; I believe in it, and I always shall." So earnest, so intellectual, yet so simple-minded a man could not but command the respect of even those who differed from him.

With his own pupils and followers he inspires great devotion and enthusiasm. Yet I noticed in one or two of his most enlightened supporters an inclination to broaden the issue, to leave the purely anatomical question on one side, and expand the expression "criminal anthropology" into wider and more useful studies. This was openly admitted by Professor Enrico Ferri, one of the most brilliant members, the most richly endowed with intellectual gifts, of the Lombroso school, whose impassioned eloquence, so frequently heard in the meetings of the Congress, was indeed one of its chief features. Signor Ferri claimed for the science of which he is so ardent a champion that it was distinctly progressive, and had regularly enlarged its purview at each succeeding Congress. The first, that held at Rome, in 1885, was limited to the anatomical anomalies of the criminal; the second, at Paris, in 1889, dealt with the criminal in his biological aspect; the third, at Brussels, in 1892, in his physiological and psychological combined, and now the question had passed into the region of sociology, and had opened up a new line of inquiry into the personality of the criminal and his relation to society. The new science had, in fact, led up to a future improved treatment of the criminal, and would thus, it might be hoped, contribute to the increased morality and greater safety of society. In these statements Signor Ferri struck a note of surrender, at least to the extent of not insisting that certain stigmata perforce impelled those who exhibited them to crime. He went further, and admitted that even the congenital or born criminal need not necessarily commit crime; the tendency might remain latent in him through life, or until certain circumstances of time and chance, some strong temptation, or overwhelming motive, woke the evil germ into baleful activity. This is the idea contained in Garofalo's ingenious refinement of the old adage that "opportunity makes the thief," or as he reads it now, "ce n'est pas que l'occasion fait le larron; elle le révèle."

It may be seen, therefore, that at least some of the Italian school are disposed to accept the ordinary notion of the genesis of crime. There is now, seemingly, a consensus of opinion that it does not originate in the anatomical anomalies of individuals. We may agree with Tarde in denying the existence of people, who, "under ANY social conditions whatever, and of any nationality, at no matter what epoch, would have undoubtedly

Expansion of criminal anthropology.

Old notion of genesis of crime still accepted.



"become murderers and thieves." On the contrary, many such criminals would have done no wrong if they had had the good luck to be born rich, and escaped the evil influences of bad surroundings. "There are some criminals," says Maudsley, "who in other circumstances might have become as great saints, as in the change of chances and things, they became great criminals. For assuredly external factors and circumstances count for much in the causation of crime. . . . No criminal is really explicable, except by a full and exact appreciation of his circumstances and nature, and of their mutual inter-action." Dr. Maudsley points his argument by asking whether the early Christians, after fixing the stigmata of degeneracy on to Saul the persecutor, would find that they had disappeared in Paul the apostle.

Heredity.

Due account must be, of course, taken of heredity, although it is possible to exaggerate its importance, and we know from the valuable results shown by our various processes of child rescue in England, that the offspring of known criminals have, in frequent cases, been completely saved from a criminal career. Children, the young generally, are in a plastic period, their character may then be moulded, formed, the worst tendencies corrected and eliminated.

Criminal proclivities universal.

But we are all of us potential criminals—possibly born criminals. Children especially appear so, and their criminal proclivities are seen in the forms of anger, resentment, mendacity, destructiveness, acquisitiveness. Some of us escape the fatal gift, thanks to happy conditions of life; and thanks also to "the gradual growth," as Nicolson says, "of inhibitory processes, such as prudence, reflection, and a sense of moral duty." He adds, "In proportion as this development is prevented or stifled, either owing to original brain defect or by lack of proper education or training, so there is the risk of the individual lapsing into criminal-mindedness, or into actual crime." To this risk must be added the obviously hostile conditions of life among the classes that turn almost naturally, and often inevitably, to crime. Our criminals proceed mostly from the lower strata of society, from its dregs indeed, from poor people badly fed, morally and physically unhealthy, infected with many forms of disease and vice. This is the hotbed, so to speak, in which the germs of crime find congenial soil to take root, develop, and exhibit a noxious vitality. We have here surely a better explanation of the origin of crime than the somewhat far-fetched and inconclusive theories of anatomical criminology.

Can criminal anthropology be made useful.

After all this, the pertinent question may be put: what really useful purpose can Criminal Anthropology serve? What good can come of it? Little perhaps in its most restricted sense, we may answer, but it is right to note that its opponents, even the most determined, are willing to admit that it has done something in the past, and may be still more largely beneficial in the future,

on its wider basis. Thus Tarde has written: "The science that evolved the so-called criminal type would not, indeed, have been useless if it had done no more than fix what the criminal is *not*, without giving a precise indication of what he is. But it has gone further; it has accumulated a number of curious facts; it has sketched out in ineffaceable characters the psychology of the criminal, and has prepared the way to his sociological explanation." Again, Dr. Næcke, in his thoughtful and closely reasoned paper, read before the Congress, after declaring that, in its narrow sense, criminal anthropology does not exist, still allowed that Dr. Lombroso had accomplished a great work in directing general attention to the fact that among the criminal classes many persons are to be found who are of lower type, and are rather deserving of pity and kindly considerate treatment than of scorn and punishment. The fact was clearly known before Lombroso, but he has emphasised it by his anthropological investigations. M. Zakrewsky, a Russian senator and eminent jurist, followed on the same side with a paper, in which he maintained that scientific criticism and good sense had demolished the theory of the criminal type, so that many people now decline to hold nature responsible for certain facts dependent on social convention. Nor will they confound biological discoveries with received opinions on crime, "opinions that, indeed, vary more largely through the world than do the shape of skulls or the size of ears." But although gone in its narrowest sense, the term criminal anthropology may take a wider meaning, and may be made to comprise larger researches: researches into the etiology (sources and causes) of crime from the social point of view, into criminal statistics, into responsibility for crime, into prevention, repression, and forms of procedure, into all studies that contribute to the one great object, the contest with crime." The whole science of criminal sociology, in short, as has been already indicated by Professor Ferri, would thus be developed and assisted, and criminal anthropology might prove a useful auxiliary to jurisprudence. But it is surely a narrower subject than that of criminal sociology which, accepting crime as one of the most complicated of social phenomena, desires to find the causes, near and far, that tend to produce it.

comprise larger researches,

Yet more was to be expected from the new studies in the opinion of many who assisted at the Congress. Its greatest usefulness may yet prove to be in paving the way to a better classification of offenders, both in the eye of the law, at and after trial, and again in their treatment when sentence has been passed. The classifications suggested are of more than one kind. The first is that strictly depending on the Lombroso theory, and which separates the so-called born criminal from the occasional or chance offender; with a further subdivision of the born criminal into the insane, the habitual, and the passionate. This was Ferri's proposal, who strongly urged that at all criminal trials there should be an anthropological *triage*, a sifting and

and help classification of offenders?

sorting out, so to speak, by which to ascertain the exact category to which an offender belonged. Ferri would associate an anthropological expert with every tribunal. It should be the business of the court, he urged, to decide on the question of fact, to say whether the person charged was the actual author of the crime; then when guilt had been proved, the expert would be called upon to class him according to his character, in the anatomical, biological, and psychological sense. When this was fully ascertained the exact form of treatment would be prescribed, and would mean relegation to one or other of the various establishments specially created for the reception of each category.

Difficulties of classification.

A classification of this kind can hardly be called practical or possible according to our present lights, or under existing circumstances. In the first place, if there is no criminal type it at once falls to the ground. Even supposing that that theory has some substratum of truth, there would be enormous difficulties in the actual classification. Even the Lombrosians admit that the habitual criminal may be either a born or an occasional criminal, and that the crime of passion may be committed by both classes. It is impossible, therefore, as Garofalo says, to establish a classification that is strictly scientific, and the functions of the expert could not easily be exercised, if at all. We are certainly not ripe in England for any such procedure, and no legal tribunal, high or low, would as yet be willing to surrender its powers of punishment to even the most enlightened and skilled exponent of the new science.

Penalties to depend on classification.

There may be, however, a great truth underlying this proposition, however extravagant it may appear at first sight. It has been urged before now that our tribunals do not sufficiently consider the offender himself as an individual, distinct and apart from his fellows, when awarding a penalty. It is a favourite doctrine with the criminologists that "in apportioning punishment or penal treatment the criminal should be considered "rather than the crime"; his innate character, that is to say, his corrigibility or the reverse, the excuses that may be made for him, the hope that is in him, or the clear fact that he is wilfully perverse and incorrigible, these should rather weigh with the court in giving its award than the actual offence of which the accused has been found guilty. Many speakers at Geneva contended that juries and tribunals (at least, abroad) greatly overlook this paramount consideration, that if, indeed, the courts wished to be thus guided, they are unable to do so, being tied and bound by the precise instructions of a code which prescribes a particular punishment for any particular infraction of that code. In Italy, as Ferri put it, special doses, special rations of punishment, so to speak, are measured out of the cask of justice, one *litre* here, two there, and so on, without regard to the individual who is adjudged to swallow them. But this is a well-known defect in the system of codification, and one reason

why, with us, there is no penal code. Our tribunals have, in consequence, more independence of action, a larger license, and a judge may use his own discretion as to the quantity to be imposed, or, at least, he may fix it between the two extremes of a maximum and a minimum.

This, no doubt, is treating the offender rather than the offence, but the question arises whether the principle cannot be carried further. It was a point urged by Mr. Herbert Gladstone's Committee that there should be more individualization of criminals; but that committee said nothing definite as how the process should take effect. No doubt they meant that it should be applied to prisoners within prison walls, and wished that the inmates of prisons should be taken singly, and subjected to such reformatory and ameliorating treatment, religious, moral, educational, and so forth, as was especially suitable to each. It is not for me, here, to express either belief or disbelief in the ultimate efficacy of such processes, I merely desire to point out that the Geneva Congress was largely of opinion that this individualization might be best tried at the time of sentence, and for this particular purpose the Italians confidently hoped the new science might prove a most useful adjunct and accessory to justice.

Individualization.

It was, however, obvious that to class offenders by categories could have no practical value unless some new and various methods of treatment were devised for giving effect to such decision—something different, in fact, from the ordinary prison, at present almost the only form of penalty available, if we except fines. It would be futile to separate and classify offenders by any system of diagnosis, and go no further. The criminologists are strongly of opinion, therefore, that there should be various kinds of establishments for the detention of offenders according to their several categories.

Variety of treatment must follow classification.

For it must be remembered that even the most uncompromising supporters of the Lombroso school do not contemplate that the criminal, to whatever class he belongs, should remain at large to repeat his attacks upon society. All that they urge is that his treatment should depend upon his character and tendencies. Thus, for the weak-minded, they would create a place of duration with more discipline than the asylum, yet of a kind less irksome and severe than the gaol; for the occasional or chance criminal, the prison pure and simple would be applicable for correction, and as a warning not to offend again; while for the "born criminal," or the "determined habitual criminal," as we may agree to call him, avoiding the controversy surrounding the first title, the Italian criminologists recommend relegation for indefinite terms to penal colonies at home or beyond the seas.

These suggestions are deserving of attention:—

(1°) As regards the weak-minded, even when such mental infirmity is proved by medical evidence, our courts are

left in doubt as to the treatment, penal or otherwise, they should prescribe; the case may not be quite certifiable, and thus the asylum cannot be utilised. On the other hand, it savours of cruelty to subject the offender to an ordinary prison, where the existing rules of separation and regular labour cannot be carried out for these more or less irresponsible creatures on the "borderland" between responsibility and the reverse. Something in the nature of the well-known institution at Gheel, in Belgium, for imbeciles, might be tried with advantage by us, or the older establishments for able-bodied paupers in Holland, at Fredriksvoord and Willemsvoord, near Amsterdam, which date back to 1816, or yet again, the penal colony of Veenhuisen in the same neighbourhood, which is used for the refractory colonists in the first-named, and able-bodied beggars who steadily refuse to work.

- (2°.) As to the second category, our modern local prisons seem to meet all requirements.
- (3°.) The third, which implies a new form of punishment, for which public opinion is hardly ripe as yet, but towards which we are certainly moving, is part of a great subject to which I shall return later on.

Garofalo's  
proposed  
classification.

Returning to the suggestions for classification, that proposed by Baron Garofalo, of Rome, an eminent and voluminous writer on penal questions, deserves detailed description. Garofalo divides all criminals into four categories: (1) *assassins*, (2) *violents*, (3) *improbos*, and (4) *cyniques*, expressions for which the exact English equivalent is insufficient, but which will be understood by expansion. (1) The *assassins* or murderers would be those quite wanting in moral sense, and who would stop at no crime. "Such a man would kill," to use Garofalo's words, "for money and possessions, to succeed to property, to be rid of his wife in order to marry another, to remove a material witness against him, to avenge a wrong, real or imaginary, to show his skill, or his hatred or revolt against authority." This class Garofalo thinks is generally distinguishable by the physical and psychological traits as already described for the criminal type. (2) The *violents* are those who give way to a sudden access of rage, yielding to excitement, and acting often in the same way as (1). But they are not, like class (1), altogether wanting in moral sense, and unless their worst passion is aroused they may respect the rights of others, and abstain from crime. (3) The *improbos* or dishonest are more or less determined to prey upon their fellows, robbing them by fraud or force, but greed is their distinguishing characteristic. It is not (still quoting Garofalo) congenital crime, often enough it is the direct result of surroundings, the want of education, bad example, idleness, and love of gratification without working for it. These Garofalo believes can be distinguished

by certain traits, such as a shifting, restless look, quick eye, heavy eyebrows, broad nose, narrow and receding forehead (old friends, these traits, *see ante*, p. 6). Last of all, (4) are the *cyniques*, or those given to sexual crimes. Garofalo believes that in all four classes there are many whom mental weakness, more or less acute, lead into crime. Thus, (1) and (2) may be impelled by homicidal mania, the mania that produces also arson and epilepsy; hysteria and kleptomania may be motives in (3); idiocy and brain softening in (4). This classification would serve to separate the real criminals from those whose offences are trifling; the latter would need no more than trifling correction, the former as true criminal types, would be subjected to the peculiar treatment likely to radically cure their propensities—a fine phrase that is not, however, likely to soon find practical interpretation.

Garofalo's classification is almost exactly that based by Dr. Nicolson on the latest form of judicial statistics for England and Wales. Dr. Nicolson has rearranged the six classes of indictable offences into which all criminality is now subdivided by these statistics, and has condensed them into four principal groups. These groups he has still further classified into three categories, in which all are comprised under the three dominant motives or propensities that produce them. These three are (1) acquisitiveness, (2) malice, and (3) lust, and the influence of each is shown by its own particular outcome in crime. The acquisitiveness is the parent of theft, and generally of "all offences against property for spoil or gain"; precisely Garofalo's definition of *improbos* criminals. Malice includes his two classes, *assassins* and *violents*, and leads to all crimes due to violence against person or property; crimes which, as Nicolson puts it, "stretch away down from murder, through manslaughter or assault with intent, to cruelty and neglect, or an act of incendiarism or cattle maiming." Lust is obviously the parent of all sexual offences, and this class comprises the criminal *cyniques*. It may be interesting, before leaving this admirable analysis of all crimes and their perpetrators—an analysis far more precise than Garofalo's—to note here the relative proportions in which these offences occur, and the extraordinary preponderance of those in the first class. Thus the per-centage of crimes of acquisitiveness is 75, as against 15 of malice and 10 of lust. This proportion has an important bearing on the question of habitual crime.

Another classification of a still more simple character, based upon the general character of crime and its intensity, rather than upon the various particular motives that produce it, was referred to at the Congress by that learned jurist and profound thinker, Professor Van Hamel, of Amsterdam. Van Hamel classes all offenders first in the two general categories of (1) chance or accidental criminals, and (2) habitual criminals. He makes no further subdivision of (1), but he separates

(2) into corrigible and incorrigible, and these again into certain distinctive categories of (a) crimes committed through social weakness, and (b) crimes that display a superabundance of criminal energy. The class (a) would clearly include the *improbos* of Garofalo's classification, and those impelled by greed in Nicolson's analysis. These, in plain English, are the idle who will not work, and who prefer to prey upon others who do. Class (b), again, are the *assassins* and the *violents*, and those impelled by malice, of Nicolson's classification. Van Hamel has been at some pains to indicate the particular form of penal treatment that should be applied to each of the foregoing categories, and has laid down:—

- (1°.) Unbroken cellular confinement for the chance or accidental offenders.
- (2°.) The progressive system; that, broadly, which is in force in Great Britain for the habitual offender who appears to be not actually incorrigible.
- (3°.) And lastly, for the habitual criminal whose persistently repeated offences evince on the face of it a fixed determination towards crime. Van Hamel recommends the indefinite or indeterminate sentence.

Habitual crime

This question of habitual crime, and the best means of combating and controlling it, did not come up for discussion in the earlier part of the Congress. As I considered it to be a subject of such extreme importance, and as the debates seemed to me to have been so far largely theoretical, even metaphysical, I sought to give a more practical turn to the proceedings, and introduced the question of recidivism and the most effectual treatment of habitual criminals. The paper I prepared and read before the Congress will be found *in extenso* at the end of this report, so that a brief *resumé* of my arguments will be sufficient here.

not affected by present methods as is shown by number of reconviotions.

I pointed out that habitual crime was unaffected by existing methods of repression, and quoted figures from English statistics showing the extraordinary number of reconviotions that constantly occur, and for all manner of crimes, statistics that have their counterpart abroad. These habitual criminals, as I pointed out, constituted the essence of the criminality of a country, the outlaws, overt and undisguised, against society; those, in fact, who persistently defy the law, and refuse to abide by the rules and regulations that society makes, and that are respected by honest people. They are incorrigible, for the time being at least; and as long as they practically so show themselves by their deliberate repetition of their attacks. As we see daily, they resist all present penal treatment; no sooner is their punishment ended than they almost inevitably return to crime. The question is, have such avowed evildoers any right to be set at large? Is not society, against whom they wage such ceaseless warfare, entitled to keep them when it has caught them? To hold them, and prevent them from carrying on their nefarious

practices, which they will almost surely resume when at large, and until they are once more (but not immediately or inevitably) recaptured, and again brought under process of law? Surely this is the logical conclusion.

If this proposition be conceded, we arrive at indefinite detention in some form or other as the only feasible and effective treatment of habitual crime. No doubt it is easier to grant the proposition than to concert measures for giving practical effect. At the very outset it must be admitted that any system of indefinite detention based upon "the indeterminate sentence," as it is called in penal science, bristles with difficulties. Many serious questions arise, many grave objections can be urged against its introduction, all tending to impede, perhaps prevent, the necessary legislation. The first is the novelty of the method, and its inevitable unpopularity until it and the reasons for it are more fully understood. It will probably be condemned at first sight as cruel; the more or less absolute loss of liberty must seem, on the face of it, far too heavy a penalty to impose. The public mind would see only the prison as at present administered, a system of punishment viewed by many with a certain (although not well-founded) distrust. Public opinion, it may be urged, would never consent to the application of such a system indefinitely. "Yes," it may be answered, "but would such objection hold against a milder system and for terms only *relatively* indefinite?" For no one could advocate the existing methods of repression and prison discipline for indefinite terms. Still less would it be right to withhold all hope of freedom from those subjected to the indeterminate sentence. Ultimate conditional release should be held up to all as a boon to be gained by reasonable presumption afforded that a cure had been effected, and that the "habit" of crime had been removed. This brings us to another, and, perhaps, the most serious difficulty in the whole question. The reluctance of the public, of the legal and official mind, to accept the principle might be overcome; such relaxations of prison discipline might be contrived as would render lengthened detention less irksome. But how, or by whom, in what way, and by what agency, is the case of each individual detained to be considered and his sentence determined? This is, perhaps, the chief and greatest of all the difficulties that militate against the proposition, and even this is not insuperable, and might yield before cautious, practical, experiment.

It was because I was so sensible of these many drawbacks and objections that I brought the subject before the Geneva Congress, in the hopes of eliciting the views of those present on the subject. My paper was fully discussed, and evoked some very interesting remarks. Among the speakers were some of the ablest members of the Congress, to wit, MM. Lombroso, Van Hamel, Ferri, Albert Rivière, Cornavin, and Gauthier, the two last eminent Swiss jurists who have quite recently been engaged in deliberations on this very question—with the result, indeed, that

Indefinite detention.

Discussion thereon at Geneva.

a sentence nominally limited to 10 or 20 years, but in principle indeterminate, has been added to the Swiss penal code.

Objections.

First, M. Van Hamel touched on the sentimental objections, which he freely admitted prevailed, and very generally. The very name of the indeterminate sentence is dreaded, he said, but only because its real import (leaving on one side its necessity) is not appreciated. Yet it means nothing more than a break with custom, and the substitution of a newer and more effective process under sufficient safeguards. He advocated the system unhesitatingly, because he believed it would have a far more deterrent effect upon the habitual offender himself, who when sentenced to a fixed term braces himself up to endure it, to pay the penalty of detection, but with the full intention of returning to his evil courses when the debt is cleared and the offence purged. But "let him know," argued Van Hamel, "that when he is caught he goes to prison to stay there, not for six months, or six years, but until the authorities believe they have weaned him from his habits of crime. Let him understand this, and that as a 'recidivist,' one who will not abide by social laws, he has forfeited his right to be at large, and you give him a sounder, clearer, view of what his lapses mean, and what society's attitude towards him is, than has been effected by any of the penal methods hitherto tried."

How decide when sentence should determine?

Leaving on one side for a moment the special character of the places of indefinite detention, we come to the question of how and when release would be gained, for it must be remembered that although the new form of penalty is indeterminate, it is not intended to be endless, and detention should cease after certain guarantees of improvement were given. Van Hamel recommended the creation of a board of commission, sitting at regular intervals at the place of detention, and inquiring carefully into each individual case on its merits, upon reports made and advice given by the prison officials. M. Gauthier, professor of law at Geneva, who was distinctly opposed to the whole system as, "however fascinating in theory, still pure theory, and nothing more," foresaw great difficulties in the action of this committee of release. He admitted that this question of ultimate release was the essence of the system, and he could not see how the committee could ever come to a decision. An immense responsibility would rest upon them; by what evidence, what information, how and where obtained, would they be guided? If the numbers under detention were large, no governor or chaplain could advise with certainty upon the whole of the individuals in custody. M. Ferri, speaking in the same connexion was not in favour of any commission, apparently distrusting the action and uses of a board of several, and recommended the appointment of a single high functionary or public official, who would be charged with the observation of all prisoners of this class; it would be his duty "to superintend the moral change in each," as M. Ferri put it, "and he would in due course bring forward

"cases in which sufficient improvement was visible or might be fairly assumed."

In England, and especially if the place of detention was at no great distance from London, the agency of the Aid Societies through their representatives, or the assistance of such painstaking and useful persons as Mr. Wheatley, might be employed to advise upon whether time was ripe for release. Private and unofficial inquiry might arrive at a juster appreciation of the feelings and future intentions of those detained than the formal action of authority. It is, I think, pertinent to this part of the question to recall attention to proposals made sometimes back to revive the ancient system of "frankpledge," a principle still fully recognised by our law, in the mutual liability and suretyship of a district or neighbourhood for damages committed within its own confines. The Reverend H. Jolly, in an article in the "Leisure Hour," Vol. 1887, p. 830, discussing the question of this suretyship, recommended that "no criminal should be released from gaol until he has proved his willingness to earn an honest living; nor until some householder in the district in which he had previously resided, or that in which he is going to settle, or some society or responsible club, is willing to receive him into its ranks, to find him employment, to exercise supervision, and give bail for his good behaviour." These suggestions are, indeed, carried out to some extent already by the Aid Societies, but their development by the same or other charitable and helpful institutions might prove highly beneficial. It is hardly necessary to point out that the free access of these agents to the prisons would be inevitable, and that the powers they would hold of recommending release might give them too much importance to be quite compatible with their position as regards the government of the establishment. Again, the placing out of those released under the conditions of suretyship above mentioned might bring the guarantors into collision with labour unions.

Revival of frankpledge.

There is, last of all, the question of the nature of the place of detention suitable for the execution of the indeterminate sentence, a point on which continental experts had not much to say. To arrive at any plan of procedure in this regard, it is necessary to return to the various methods of classification already put forward. Of these, only the simplest seems likely to become of much practical value, and this resolves itself into two grand divisions.

How carry out the indeterminate sentence?

- i. Crime that is occasional, casual, and comparatively unimportant.
- ii. Crime that is serious, whether (a) through the inherent gravity of the offence, or (b) crime that is so constantly repeated that it becomes serious, although not so originally; a class which naturally comprises all phases of habitual crime.

Various categories.

The treatment of offenders in class i. calls for no special remark, and existing methods would serve. The same may be

said for class ii. (a), who would be consigned as at present to local or convict prisons, according to the view taken by the tribunals before whom they were tried.

Less heinous  
habitual  
offenders.

But with class ii. (b) we are brought face with the habitual criminal, the offender for whom especially this new method of penal treatment is proposed. Here again there are gradations to be counted with; there must be a distinction between the less heinous offenders, who are yet persistent, and the really serious who are also habitual. For both classes the system of indefinite detention seems prescribed but not in the same establishment nor yet under the same regime. The first class would consist mainly of the vagrants, vagabonds, drunkards, the poor weak kneed creatures who have not the strength to run straight, even if they were willing to do so, and who wander all over the country, more or less, visiting and revisiting for a brief term almost every one of Her Majesty's prisons. With these would be classed the imbecile and weak-minded offenders already referred to on p. 18, where the nature of the receptacle to be appropriated to them was also briefly indicated. There are surely no great administrative difficulties in the way of creating a labour settlement on the Dutch plan, a workhouse, in fact, on a more extensive scale, but with the obligation to work that is imposed nowadays upon able-bodied paupers, but with opportunities of self-improvement and possible social recovery. A first experiment might be made with such an establishment as an annexe to any prison that has space greatly in excess of demands and ground within and beyond the walls available for the open-air employments that seem most suitable for the inmates of such a place.

Persistent  
professional  
criminals.

Finally, for the principal and gravest category, the habitual criminal, whose repeated offences are aimed against and do manifest injury to society, and for whom I contend the only salutary and effective treatment is the indeterminate sentence, what manner of place of duration can be devised? It is clear that imprisonment, as we understand and practice, it would not be possible; it probably would not be tolerated by public opinion, always, and just now more than usually, distrustful of our penal methods. Neither the strict separation of the local prison, nor the progressive treatment of the convict prison, would be applicable, or indeed advisable. In a place of indefinite detention many of the received notions on prison discipline must go by the board; many restrictions must be removed, many relaxations permitted. Labour would be imposed, of course, but it would be task work in association with no strict rule of silence, and the employments chosen should be as little irksome and repulsive as possible; trades and handicrafts, industrial occupations, the cultivation of field and garden, the raising and care of stock—in a word, Dartmoor, but in a better climate under pleasanter conditions, and so far as the farming operations were concerned, a more generous and fruitful soil. The prison

Suggested  
"place of  
indefinite  
detention."

buildings need not be elaborate or expensive—one range of simple cells of corrugated iron on the plan of the first temporary prison at Wormwood Scrubs. Separation would be the rule at night, but meals might be taken in common, probably on the works. A sufficient dietary would be of course imperative. For healthful recreations an ample supply of good current literature, lectures, concerts, entertainments, when such boons and privileges had been earned by continuous good conduct. The problem of relaxation sufficiently amusing, yet not carried too far, could only be solved after careful experiment, and there seems no good reason why a system of giving "passes," or permits to go at large for short periods on leave of absence, should not be tried in the way known to the Irish intermediate prison, but going somewhat further as regards time and distance.

Suggestions of this kind may seem so revolutionary, the whole scheme so Utopian and far-fetched, as to be too absurd and impracticable for adoption. For my own part, drawing upon my own knowledge and experience, I can see no insuperable difficulties in the way. The worst objections to be overcome would be a certain amount of popular prejudice, and the vague apprehensions of uninformed and unprogressive minds. It may be urged that the concentration in one spot of a mass of the worst characters, people from whom the certain hope of release was withdrawn, might be dangerous; such men, yielding to despondency might grow desperate, and pass easily into mutiny and insubordination. But it must be remembered that under this system release is not absolutely barred. Again, it is a fact well known to all practised prison officials that habitual criminals, the worst as regards offences, are nevertheless the most tractable, and generally the best-conducted members of the prison population. With many of them, indeed, imprisonment has become second nature; thralldom is their normal condition, liberty only a short and occasional holiday. The habitual criminal, in fact, by his repeated return to gaol, voluntarily places himself in the very position that indefinite detention implies.

Anticipated  
dangers  
combated.

Habitual  
offenders most  
tractable.

Nor must it be forgotten that there really exists a certain and fairly numerous contingent of the constant inmates of prisons who would be content to stay there of their own accord. This is really no exaggeration. Not only have I often met with prisoners who have asked in all seriousness not to be set free, but it is of daily occurrence that, when released, as is inevitable, they proceed at once to the commission of some offence, trifling or foolish in itself, which will gain them the coveted boon of re-imprisonment. Old officers of convict prisons bear testimony to the fact that many convicts do not value "remission," and will misconduct themselves on purpose to forfeit it, and remain as long as possible in confinement. This strange fact is not limited to English experience. Signor Ferri instanced cases within his own knowledge where Italian convicts begged and

Many like  
imprisonment.

petitioned against pardon and release. Emile Gauthier, a French writer (once a prisoner), tells a curious story of an old convict who had found a comfortable billet as hospital assistant, and who, being obliged to surrender it on release, wrote asking the governor of Clairvaux Prison to keep it open for him, as he meant, when free, to qualify at once for a fresh sentence of imprisonment.

Necessary safeguards and precautions.

I cannot see the force of any objections based on the fear of outbreak and disturbance, provided always that due precautions are taken, and sufficient safeguards exist. There must be discipline, of course, a system of unremitting watchfulness and observation of the demeanour of the prisoners; a bad spirit existent, or on the increase, invariably betrays itself to the practised eye, and to render this possible and effective the numbers to be located in each one of these establishments should never be larger, at most, say, 200 or 300. This discipline, and the uniform submissiveness that would be essential, would be secured by making immediate removal to a prison of the old and strict kind the penalty for all misconduct. The comparatively near neighbourhood of such a prison would be a *sine qua non* in the system of indefinite detention. Again, the rules in force at all prisons prohibiting the free use of tools, knives, weapons, and so forth, would be necessary in the place of detention; also the regular searchings on going to and from labour, and of the prison cells and buildings. Supervision, too, would be also necessary, constant rounds and visits to working parties, although these last need not be always under the personal control of an officer; it might be sufficient to appoint a well-conducted and skilled prisoner as "ganger" or headman, to receive orders as to the task, and exercise a certain authority over his fellows. Safe custody would have to be closely considered, and this might be sufficiently guaranteed by a cordon of posts drawn around the outermost frontiers of the establishment.

Costliness.

The costliness of the system now propounded will, no doubt, be advanced against it. To retain large numbers in custody at the charge of the State who would under present arrangements go free and fend for themselves, must naturally bear heavily upon the Exchequer. But if this increased burthen be dissected, it would be found to be only a transfer of the incidence of expense. If there was a direct addition to estimates, there would be an indirect, and assuredly very substantial saving, in the reduced amount of damage done by depredators otherwise at large, and further in the reduced expenditure on account of legal processes and the whole paraphernalia of justice. Moreover, these places of indefinite detention should be administered on such sound economic conditions as to be as nearly as possible self-supporting. They should be institutions both agricultural and industrial; the daily food should be raised upon the prison lands, the clothing should be woven and

made up in the prison workshops, all repairs, every article necessary for consumption and use, should be made upon the premises. These are points too technical to refer to more in detail, but if the general principle were inculcated that the institution should be far as possible self-contained and sufficient for its own needs, the question of cost would be considerably simplified.

Last of all, it may be objected that our existing system of conditional liberation is a more natural and practical method of treatment, less onerous to the State, more conducive to the permanent recovery and rehabilitation of the individual. But is our police supervision on license holders effective? Does it control and keep its hand upon all, or any very large number of them? The answer must be in the negative to both these questions. That supervision does not deter or protect society from crime is shown by the number of serious crimes committed by license holders who are not known to be such at the time of arrest, or even some time afterwards. When a crime has been committed whereof the perpetrator remains unknown, the police may beat up the quarters of such license holders as are within their grasp, but this seldom means more than that they render life difficult, perhaps intolerable, to these old offenders, without fixing the new crime upon any one of them. But the strongest argument against the efficacy of police supervision as a shield and protection to the public is that its action is exceedingly circumscribed. It is applied only to those issuing from convict prisons; it takes no notice of those habitual offenders who continually pass in and out of the local prisons, many of them great criminals too, for since the craze for inflicting the lightest possible penalties, numbers of old convicts, after enduring several terms of penal servitude, are now sentenced only to short imprisonments. Such men as Milsom and Fowler are frequently inmates of local gaols, and afterwards frequently at large without any supervision at all. Surely there is in all this much to recommend the adoption of a system of conditional detention, the substitution of detention prolonged indefinitely, yet only nominally, for our present ineffective methods, especially that of conditional liberation.

Conditional detention as compared with conditional liberation.

I may be permitted to close this report by quoting the words of one whose name has been frequently mentioned in its pages, but generally as a theorist only. The following pregnant sentences of Dr. Lombroso will show that he is also a man of eminently practical views. He wrote in 1885:—

Lombroso on the indefinite sentence.

"Human justice acting for the defence of society will never accomplish its ends until the present system of inflicting short terms of imprisonment is replaced by the perpetual sequestration of incorrigible criminals. . . . The cost of thus keeping them, however considerable, will be much less than that entailed by their new crimes, and their new trials, which often cost fabulous sums:

"Whether criminals are or are not persons diseased, they are dangerous in themselves, dangerous also in the posterity to whom they may give life; to sequestrate them entirely is no more unjust than to shut up madmen, and probably more beneficial.

"Thus society, which has suffered by them, and spent much money in securing their conviction and punishment, would not be further mulcted by setting them free; and this in deference to a theoretical principle no longer believed in, that the prison is a sort of laundry that washes away every fault."

September 20, 1896.

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THE PRACTICAL TREATMENT OF HABITUAL CRIME.  
(*Du traitement pratique de la Recidive.*)

A Paper contributed to the Geneva Congress by  
Major Arthur Griffiths.

That illustrious savant Enrico Ferri has used the following pregnant and remarkable words in his *Sociologia Criminale*:—

"Penal justice is at this moment a vast machine, drawing into it and casting out again an enormous number of people all of whom lose within its wheels their lives, their honour, their health, and moral sense; they bear henceforth its ineffaceable scars, and drift steadily towards the ever increasing ranks of professional crime and recidivism, too often without hope of recovery."

This is truth, plain and indisputable. The action of retributory justice, the working of the penal law, is frequently merely mechanical; both are in consequence largely ineffective, sometimes distinctly cruel. The law in its laudable desire, and obeying its bounden duty to defend the many, presses often too hardly on the few. Society is paramount, and demands protection; yet does not invariably get it. As the world's experience fully shows, the law and penal administration have nowhere entirely prevented crime, nor have they greatly deterred from crime, still less have they very largely cured crime. The dangerous classes—all those who profess crime, who live by it, who persist in breaking or defying the defensive rules society has made—still survive, still exhibit a disquieting tendency, to increase if not always in numbers, at least in activity.

Is there no remedy? Can no new measures be devised, no modifications suggested in penal treatment, that will check persistent and habitual crime? This is a practical question, and to many common sense people it may appear of deeper interest to society than the most ingenious and elaborate theories of criminal physiology and psychology. At the same time, while thus emphasising the need for fuller inquiry into the practical treatment of crime, I have no desire to detract from or minimize the value of the researches made by the school of the eminent Dr. Lombroso, only in this report I propose to deal with the concrete criminal, as he actually presents himself, not the abstract conception, based though it may be on the many curious traits and anomalies elucidated by the criminal anthropologists.

Let us pause for a moment to consider what constitutes crime.

Crime has been well defined by a great English jurist, Sir James Stephen. As he states it, it is "any act or omission to act, in respect of which legal punishment may be inflicted on the person who is in default, either by acting or omitting to act."



This definition covers wide ground, and obviously ranges between offences of a mild or minor character and the most heinous known. In English criminal statistics all offences are divided broadly into (1) those that may be dealt with summarily, at once that is to say, *en police correctionnelle*, so to speak, and those (2) that must be tried in due course of law by the higher tribunals. The first category (1) comprises such lapses as drunkenness, vagrancy, mendicancy, and breaches of small ordinances, the second (2) are crimes against the person and property, forgery, frauds, and sexual offences.

Those in (1) are naturally by far the most numerous, as we shall see. They can hardly be called actual crimes, not at least in their immediate effects, they only tend towards, and will often produce, crime. In England the average annual number of such offences is about 600,000; and their more or less trivial character has been indicated above. Of the second category (2) the average annual number committed is calculated at about 80,000, or in the ratio of 289 per 100,000 of the general population; but all of these offences are not brought home to their perpetrators, so that the average number of offenders actually tried for the more serious offences is no more than 54,000, or 194 per 100,000 of the general population. It must be remarked that (1) continually passes into and reinforces (2), so that (2) represents the crimes committed by both recruits and veterans in the army of crime. It is with (2) that the penal law must principally concern itself, because recidivism is constituted from this category, and some startling figures may be quoted here to show how largely this recidivism prevails in England, where, notwithstanding, ordinary crime has very appreciably diminished.

Taking the criminal statistics for the year ending 31st March 1896, it appears that the following numbers were sent to English gaols of all kinds (both "local" or for short terms, and "convict" prisons for lengthened terms of penal servitude):—

I. Males	-	-	-	-	111,021
Females	-	-	-	-	42,147
					<hr/>
					153,168

And lest these figures should appear to be at variance with the total of category (2), it is well to point out that the balance of the grand total 153,168 is made up of persons in category (1), who, to that extent, also found their way to gaol.

Of this grand total the following had never been convicted previously, or, at least, so far as known, had never before entered a gaol:—

II. Males	-	-	-	-	56,106
Females	-	-	-	-	11,338
Hence we have the remainder—					
III. Males	-	-	-	-	54,917
Females	-	-	-	-	30,809

all of whom had been previously sent to prison, and in this Class III. the curious fact, already noticed elsewhere, receives fresh confirmation that recidivism is more largely prevalent among women than among men.

It is in dissecting III. that we are brought face to face with some very remarkable facts concerning recidivism. A detailed Table, (A.) showing the exact number of reconvictions from once to over twenty times will be found at the end of this report, but it will be interesting and instructive to bring some of these figures forward at once.

Of the totals given in III., viz., 54,917 males and 30,809 females, no fewer than 5,190 males and 7,475 females had been already punished with imprisonment more than twenty times. Between eleven and twenty times, the numbers are 5,380 males and 3,919 females; between six and ten times, 7,571 males and 4,098 females. The largest proportion, viz., 16,654 males and 7,707 females, had only visited prison once, it is true; but the numbers are large for the second and third times, although less so for the fourth and fifth. By far the largest number of the most frequent recidivists, it must be again remarked, are women, of whom 7,475 had been imprisoned more than twenty times.

We have here, then, a large contingent of habitual criminals perpetually on the move, into prison and out of it, all of them subjected, when inside, to the various processes known to penal administration, yet remaining in a very large proportion unaffected, or at least uncured. No treatment seems to avail. Neither severity nor kindness, neither the most irksome restraints nor the more philanthropic methods of moral and educational persuasion, for both are and have been largely and anxiously tried. A few may be warned by the first, a few encouraged by the latter, and these may go out to sin no more; but a large number remain, as the above figures show, obstinately fixed in evil courses, and inevitably return to crime when once more at large.

This is the criminal residuum, the essence of the criminality of a country, the main body of the army of crime, always at warfare with society, against which the law fights more or less strenuously, but generally in vain. The State may from time to time capture most of these habitual offenders, may punish them, seclude them, exhort, strengthen, and assist them when again set free, but it still largely fails to transform them into honest men. Let us call them by what name we will: born criminals, chance or instinctive criminals, criminals by contracted habit, whether from misery or a weak moral sense—and there are, no doubt representatives of each category among them—but their innate distinctive characteristics are all merged in the one general expression of recidivists, or habitual criminals. Criminals they are, whether born or made, criminals under existing circumstances, whether by predestination, irresistible inclination, or legal neglect, and criminals they will for the most part continue

while they live. Their path is chosen; they are outlaws against society and must be treated as such. But what that treatment should be has yet to be set forth.

Let us next consider the various methods of penal treatment available or at present in use against these habitual offenders. I may perhaps be permitted to observe here that no country has made more repeated efforts, has experimented more largely in penal processes, than Great Britain. It has tried deportation and on the widest scale, with such marked results that the drawbacks to the system have been and still are overlooked in the hopes that a second Australia may be created by imitation; it was one of the first to adopt cellular imprisonment, and it is at this moment almost alone among civilised nations in possessing a superabundance of single cells, so that every individual to-day incarcerated has his own separate cell, and there are yet many more to spare; it invented the progressive system, the "Irish" or "Crofton's," so called after its supposed founder Sir William Crofton, a system still in a sense practised in Great Britain; it has given very considerable attention to "patronage," or the assistance of discharged prisoners. Reward has not been wanting, it is true, and has been afforded by the undoubted diminution of the great volume of crime in the country, although a large allowance must be made for other causes, which have also been operative, such as the spread of general education and the rescue of childish offenders, who would otherwise have recruited the ranks of habitual crime. And yet that same habitual crime still flourishes hydra-headed, is still vigorous with all the disquieting symptoms of vitality and growth. It has, in fact, resisted the treatment applied to it.

What is the obvious logical consequence? That other processes should be tried. Can they be found? The only satisfactory answer to be afforded must depend upon the result of actual experiment. But the direction of that experiment may be indicated, and in no way better than by repeating a somewhat paradoxical statement that I have written elsewhere. It is to this effect:—

"That the *whole* of the criminality of a country can be classed in two grand divisions, first, those offenders who should never be imprisoned, and secondly, those who should never leave prison."

This proposition may be enlarged and explained to mean that for a certain large class of minor, or, so to speak, first offenders, the discipline, the mere stigma of the prison, should be avoided as hurtful and demoralising, tending to drive the comparatively innocent and untainted into and still further along the wrong road. This humane theory has already been recognised, and partial efforts have been made in legislation to secure it by such measures as the conditional sentence and the extended impositions of fines. As for the second category, it refers obviously to the habitual criminal, who by his repeated offences exhibits a

deliberate intention to revolt, and who has thereby forfeited the right to be at large. He is an incorrigible, to use the extreme definition, although that is really too absolute and finite an expression. No one, humanly speaking, is incorrigible; if he were so there could be for him one effective treatment alone—that of extirpation. But even that trenchant method has never served to abolish crime. It was tried by Great Britain when, with its savage and draconian code of fifty years ago, it massacred its hecatombs, when offenders, the most venial, were hanged for the most trivial offences or banished into outer darkness at the antipodes. As a matter of fact crime has been better reduced by our modern milder treatment than by the ruthless severity of the past.

The only alternative to wholesale and drastic removal is indefinite detention, and this brings us to the second category of my paradox, the class of criminals who should never be released from gaol. "Never" is too strong a word, however, and must be modified into prolonged detention conditional on a strong presumption that a cure, or at least a convalescence, has been effected. Habitual offenders must, in fact, be held as hostages for the protection of honest folk so long as they are not prepared to lay down their arms and surrender at discretion. This is neither more nor less than the indeterminate sentence of imprisonment, which has already found many advocates but few practical supporters. We have, it is true, the American experiment as tried at Elmira Reformatory, but here the detention can hardly be called indefinite; although release is supposed to depend on reasonable assurance of amendment achieved, and imprisonment seldom exceeds a couple of years. Moreover, the Elmira system is only applied to the youthful and most hopeful subjects, especially selected as such, and often first offenders; it is only a development of the reformatory system already so productive of good results in England. Its beneficent and somewhat exaggerated methods are not for the habitual criminal, that pariah, hardened and generally irreclaimable, who still remains the *crux* of criminology. When the indeterminate sentence is applied to such as these we shall be approaching a solution of the last serious problem in penal administration and treatment.

There is some reason to believe that public opinion in England is ripening for a change in this direction. The system bristles nevertheless with difficulties, none of them insurmountable, perhaps; but all demanding the closest attention. Detention cannot be prolonged indefinitely without certain distinct precautions. Its infliction must first, and before all, depend upon the character of that detention. Cellular confinement for any long period is out of the question. England has already fixed for itself the general limit of that treatment at nine months, although occasionally it has been extended to one year and even two, but only with safeguards and relaxations. And there is already a strong disposition among the far-seeing and deep-

thinking to altogether condemn the system of cellular imprisonment. In Belgium, as we know, the periods of separate confinement have reached many years in length, inflicted with the utmost strictness and severity; but the Belgium prison authorities are said to be weakening in their affection for this extreme treatment, and already contemplate great modifications. Nor can our progressive system be exactly applied; the regime of the convict prison, with daily labour in association and separate by night, is in itself too severe for indefinite infliction.

None of these methods and processes will well serve for the indefinite and indeterminate sentence. It must be carried out under different conditions, less onerous, more humane, in an establishment other than an ordinary prison. It must be a place of duration, of course, to the extent of exacting discipline, compelling industry, forbidding free movement. But it should be more an asylum, a hospital (the moral hospital of the new criminology?) with life under few restrictions in the free open air. It will be in a measure the realisation of that dream of the "agricultural colony" so eloquently advocated by Professor Ferri. A penal establishment devoted to agricultural and industrial pursuits, self-supporting as far as possible, with healthful wholesome relaxations, and, when the privilege has been fully earned and it is certain that it will not be abused, permission to go beyond the limits of the colony, to visit relations and friends, but with the obligation under heavy penalties to return. This last may seem a far-fetched, illusory suggestion, but it was tried, and without inconvenience, with certain selected prisoners in the "intermediate prisons" of the Irish system, although only to a limited extent. It might be thought that to thus open the cage would mean the flight of the bird for ever. But in England there would be no fear of this; even if attempted, and momentarily successful, recapture under our far-reaching system would nearly certainly follow.

It may be objected here that the method thus sketched is but an enlargement of our present system of conditional liberation, or "ticket of leave," a system that has no doubt much to recommend it, but which nevertheless has not entirely succeeded. The convict conditionally at large complains often of the interference of the police, who hunt him up, as a matter of course, when crimes are committed and their perpetrators unknown, and arrest him on mere suspicion. But this is not always the case, for many crimes are committed by convicts on ticket of leave and yet never brought home to them. Again, recidivism is not confined to convicts, to those who have passed through penal servitude. The figures given in the earlier part of this report will show that habitual criminals are to be found among the offenders sentenced to shorter terms, and who are not released conditionally, or until the full completion of their terms.

Again, some may say that the simplest method of establishing the penal colony for indefinite detention would be to revive

transportation, or deportation, to distant points, to new countries beyond the seas. Opinion in England is decidedly opposed to this system, however attractive it may appear in theory; we have tried it in practice on the largest and most costly scale, and it is our deliberate conviction that its drawbacks greatly out-balance any possible advantages. The chief objection to the penal colony at a distance is the difficulty of efficient control. "Relegate your prisoners to a special agricultural establishment, but keep them close under your eye," this is the sole means of ensuring good government, of checking abuses, of applying efficiently and with sufficient care and judgment those tests of improvement upon which the termination of the sentence will depend. Moreover, it seems unfair to impose the burthen of criminality rejected by the metropole upon a new or young community, with little facilities of absorbing it when sufficiently purified and set free. Nor must another necessity be forgotten, that for returning to the severer forms of prison discipline for the revolted and recalcitrant. Relegation to the common prison must always be held over the penal colonists as the penalty of persistent misconduct. All these arrangements can be best made at home, discipline can be best maintained, humane supervision best secured, in the full light of public opinion. The control of the indeterminate prison, its daily progress, the results it aims at, and the measures of success it may achieve, all this should be in the hands of responsible officials, working under the keen observation of the whole nation at large.

I will not pause here to indicate the details of organisation of such a home penal colony further than to urge the selection of the most suitable site as regards situation and fertility. There is no need to relegate the prisoners to the dreary uplands of Dartmoor or the quarries of Portland; the reclamation of waste lands should not be the main idea of employment, but the profitable cultivation of the farm and the garden—labours peculiarly well suited for the class of person under treatment. There would be no difficulty in obtaining all that was required in these days of agricultural depression in England, when the best land can be rented at the lowest rates, and many fine estates are actually but half cultivated. But industrial occupations should also be followed, mainly for home needs. The colony should be first, and before everything, self-supporting. Nothing that can be made within its limits should be purchased outside, and this not alone for economic considerations, but to encourage self-reliance, and find a proper outlet for the energies and abilities of the colonists.

As to these colonists, a certain wise selection should, of course, be made. They should be chosen from among the ranks of recidivism, giving preference to the seemingly most corrigible, most amenable, most capable of improvement, and these should be by far the largest number. It would be a mistake to suppose that the recidivist, the most persistent habitual criminal,

is a troublesome, undisciplined creature; on the contrary, he is the best and most exemplary among the inmates of a gaol. The reason is not far to seek; he knows by long experience that submission to order and willing industry are the only methods to make life in gaol tolerable, and he yields with the best grace possible to the inevitable. All recidivists are not exactly the same. The ranks of habitual crime always contain a strong contingent of the feeble, both physically and mentally, beings that cannot be exactly termed "irresponsible," who yet hover close on the "borderland"; not sufficiently weak-minded to be certified as insane, hardly strong enough to be treated on the broader basis of comparative independence accorded to the inmates of the penal colony. But with due precautions room might be found for these also. They may not be equally capable of performing efficient work, but work of a lighter and more desultory kind might be given them. If, moreover, it be objected that such as these are morally incapable of working out their redemption, of obtaining that diploma of conditional liberty based on presumed improvement, the answer is that for them the life of the colony is a safer and more humane *milieu* than the prison cell, to which, through their innate weakness and the blind mechanical operation of the law, they are so constantly returning.

There remains one last difficulty that might be expected to impede the carrying out of the indeterminate sentence, and that is the way in which it should be "determined," or ended, if at all. Who shall decide on this momentous question, which is, in truth, the gist and essence of the whole system? Some suggest that it should be the function of the judge or magistrate or superior controlling authority in prison administration. It is to be feared that none of these eminent, able, painstaking officials, already overburdened with their own daily duties, could give the time and attention indispensable for an accurate decision on the prisoner's progress towards reform. Nor can the governors, chaplains, and doctors arrive with certainty at the necessary conclusion. There is nothing more deceptive than prison amendment, as all of us concerned with practical prison administration have continually found; the outward improvement exhibited has but too often no solid inward foundation, and without that relapse must always be feared. This point is, I believe, the real *crux* of the question. It may be solved, and possibly the indefatigable labours of some earnest, self-sacrificing spirit, who can bring great gifts to bear, quick insight into character, keen intelligence that will not be misled by fallacious evidence, would do it; but men of the class of Obermayer, of Bavaria, and Montesinos, of Spain, or our own Maconochie, are rare, and such qualities as they possessed are not to be met with in many governors or directors of gaols.

But that good may come of the adoption of the system of indeterminate imprisonment will surely be admitted by most

men. That great results will be rapidly achieved must not be expected. That most we may hope for immediately will be the segregation of recidivism, and for long periods, during which curative processes may be applied, so that one day more or less remote the habitual criminal may be released purged of his criminal bias, and no longer a permanent menace to society. This, I believe, is the honest desire of all of us—both the pioneers and leaders of scientific thought, as well as the more humble but practical prison administrators, and I pretend to be no more—we have all of us, I think, one common aim and aspiration, and that is to contribute something towards the gradual reduction, the elimination, the eventual extinction of crime.

TABLE A.

NUMBER of PERSONS received in 1895-96 who had previously entered PRISON.

Once.		Twice.		Thrice.		Four Times.		Five Times.		From Six to Ten Times.		Eleven to Twenty Times.		Above Twenty Times.		Total.	
M.	F.	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.
16,654	7,707	7,925	2,608	5,303	1,961	3,936	1,654	2,953	1,387	7,571	4,093	5,380	3,919	5,190	7,475	54,917	30,809

NOTE.—The same prisoner convicted more than once in the year appears in separate column each time convicted.

That this recidivism is of increasing growth is shown by the figures of those re-sentenced to penal servitude.

In 1870, of 1,548 sentences of penal servitude, 276 were reconstructions, or one sixth.

In 1895, of 893 sentences of penal servitude, 962 were reconstructions, or between one third and one fourth.

