


Summer 1933

## Twenty-Five Years of Criminology in Austria

W. Gleispach

Follow this and additional works at: <https://scholarlycommons.law.northwestern.edu/jclc>

 Part of the [Criminal Law Commons](#), [Criminology Commons](#), and the [Criminology and Criminal Justice Commons](#)

---

### Recommended Citation

W. Gleispach, *Twenty-Five Years of Criminology in Austria*, 24 *Am. Inst. Crim. L. & Criminology* 176 (1933-1934)

This Article is brought to you for free and open access by Northwestern University School of Law Scholarly Commons. It has been accepted for inclusion in *Journal of Criminal Law and Criminology* by an authorized editor of Northwestern University School of Law Scholarly Commons.

# TWENTY-FIVE YEARS OF CRIMINOLOGY IN AUSTRIA<sup>1</sup>

W. GLEISPACH<sup>2</sup>

## INTRODUCTION

What constitutes "progress"? Certainly not everything that is new. Opinions often differ, especially in penal law, as to whether or not certain new regulations are to be considered as "progress." In the following discussion I shall not allow my personal opinion alone to be the judge. I shall include reforms that are debatable, but if I do not consider them as forward steps I shall not hesitate to say so.

Looking back over the last twenty-five years, two facts may be remarked. The Penal Law Book of Austria dates back to 1852; its basic principles and some of its particular precepts refer back to the Penal Law Book of 1803, hence it is quite out-of-date. For several decades attempts have been made to introduce a new penal law code. The drafts drawn up in 1912-13 nearly became law, but the World War ended the discussions in parliament. After the war Germany and Austria combined in an effort to formulate a penal law code that should be similar for the two countries in substance and even in wording. The drafts of 1927-30 have already occupied the penal law committees of the Berlin and Vienna parliaments for several years. Frequent dissolutions of the parliaments and changes in governments did not end the work. At present everything is at a standstill and the drafts will have to be rewritten. Much energy and labor have been spent in an effort to obtain a new penal law code, but to no avail. Yet these preliminaries accomplished some good and for that reason deserve mention here. Usually, when a partial reform in a very limited field was decided upon, the drafts could be used as a model. The appropriate sections had only to be taken out and incorporated into the existing laws.

The second fact: The peace treaties at the close of the World War changed a mighty empire into a state of six and a half million inhabitants; a state which, on account of its boundaries, the connections of old routes of commerce and the destruction of a great economic unit, cannot live without foreign help, and uses up its best forces in the struggle against financial difficulties and economic

<sup>1</sup>Translated by Miss Marion Kappes, Evanston, Illinois, U. S. A.

<sup>2</sup>Director of the Institute for Jurisprudence and Criminology in the University of Vienna, Austria.

distress. Many plans for penal law improvements in the largest meaning of the word were retarded for that reason and good beginnings for important progress were halted. When economy becomes the rule, reform work must stop. Every real advance in the fight against crime will pay for itself in the long run, but such long term investments are denied to a state in a financial position such as Austria's.

### *Responsibility*

According to the Penal Law Code, only children up to the age of ten were completely free from penal responsibility; young minors (ten to fourteen years) were criminally liable to a limited extent; those over fourteen were considered essentially the same as adults. The Juvenile Court Law of July 18, 1928, completely changed this. This meant without a doubt the greatest advance that penal legislation has seen. Young minors are criminally irresponsible and cannot be punished. (For educational measures see below under Prevention.) The age period from the end of the fourteenth year to the end of the eighteenth—taking as point of reckoning the date of actual commission of the crime—constitutes the period of "problematic maturity." The judge must investigate each individual case and declare the party irresponsible in case there are particular reasons such as retarded development owing to illness, undernourishment or neglect, to account for a failure to sense the illegality of the act or for an inability to act otherwise. According to present statistics about ten per cent of these cases are declared irresponsible. Educational measures must then be taken according to circumstances, as with *young* minors. The penal procedure in the case of juveniles acknowledged as responsible merits a few words. The ideal formula for judging responsibility, which is based on combined biologic and physiologic methods, exerts its beneficial influence on the juvenile penal law. It comes from the penal law draft of 1912 and reads in general: he is not punishable who, on account of lunacy, imbecility, or disturbances of consciousness, does not possess the psychic faculties mentioned above. Since psychiatry in its present standing is far in advance of rules of the penal code, specialists and judges have recourse more and more—*praeter legem* but to the advantage of the cause—to this formula in judging doubtful mental cases.

### *System of Punishment*

The Penal Law Code prescribes capital punishment in many instances: for the most serious cases of high treason, for murder

(that is every premeditated killing) and for certain other serious crimes. In old Austria before the war, sixty to seventy death sentences were pronounced every year; they were seldom executed as the Emperor usually invoked his right of mercy. A law of April 3, 1919, abolished capital punishment in the procedure of the regular courts. It may now be pronounced only in extraordinary martial law procedure for revolt or for serious outbreaks, of murder, theft arson, and malicious damaging of others' property; it may also be pronounced against soldiers of the federal army for serious military crimes. No use has yet been made of this power. In ordinary procedure hard labor in a penitentiary for life has replaced capital punishment. We personally have considered this reform a mistake from the first and we do not see any progress in it. In recent years murders have increased—motiveless murders and murders of the most heinous character. Many writers and even the liberal newspapers, as well as large groups of the public are in favor of a re-enactment of the law requiring capital punishment for murder.

Fines are coming more and more into use. The minimum fine is put at three shillings. The revenue from the fines goes to the treasury (formerly it went to the community poor fund) and is used for the establishment and upkeep of houses of correction for youthful criminals. (Juvenile Court Law §52.) In order to make payment of the fines easier and to avoid the necessity for arrest on account of failure to pay, the court may allow payment and be deferred for a period not to exceed six months or may allow payment in installments (Penal Procedure Act of the year 1912 and §409 of the Penal Procedure Ordinance).

### *Measures of Reform and Protection*

Measures of reform have been especially developed in the juvenile penal law, which will be taken up in the next paragraph and later. Confiscation of goods that served as instruments for the perpetration of a punishable act or that were produced or procured by such act is largely taken care of by new special penal law acts, it being now immaterial whether or not these goods are possessions of the criminal. Confiscation may also be ordered even if the criminal cannot be discovered, cannot be prosecuted, or by reason of penal exemption cannot be condemned (as for example in cases of irresponsibility).

*Measure of the Punishment*

The punishments as prescribed by the Penal Law Code for various crimes are very severe. The law itself allows the judge to mitigate the sentence in cases where there is reason for leniency. This extraordinary power of mitigation has been greatly extended by the Penal Procedure Act of 1918, so that the courts may take full cognizance of the difference between acute and chronic criminals. If the law sets a penalty of ten to twenty years or even life imprisonment the court may reduce the punishment to as little as one year; this is thought by many to be going too far, especially in the case of murder. Prison sentence of five to ten years may be shortened to six months; minor penalties can always generally be shortened to one day.

The penalty for crimes is imprisonment, that for misdemeanors and infringements, detention. Another important event of the year 1918 was the privilege granted the courts whereby crimes for which the penalty was not more than five years imprisonment might be made punishable by detention instead of imprisonment. This privilege was to be exercised especially in the case of occasional offenders or if there were extenuating circumstances suggesting grounds for precluding or suspending punishment, in other words, in cases bordering on impunity.

The important law of July 23, 1920, introduced conditional liberation. This is admissible in all cases where the penalty is detention or fine. Hence it is particularly significant that the court may sentence to detention even criminals, for if this is so even a person guilty of a minor crime may have the benefit of conditional liberation. It is for the court to decide whether considering the nature of the act and the injury, and the conduct and character of the culprit, the mere threat of execution of the penalty is more effective than the execution itself. The personal circumstances of the offender are to be carefully looked into. The court then determines a probation period of one to three years for the culprit, and may issue definite orders for his conduct during this time, in order to avoid a lapse (for example, alcohol may be forbidden); moreover, guardianship may be ordered during this time. In the case of minors this must be done unless arrangements have already been made for education and supervision. The suspension of the penalty may be set aside and punishment instituted if the offender again commits any punishable act; but in the case of petty misdemeanors, not related to the same pernicious inclination as the former, the suspension need not

be set aside. Further grounds for setting aside the suspension are: malicious disobedience of instructions and persistent frustration of guardianship; drunkenness, gambling and vagrancy. If the probation period is satisfactory, the penalty is considered paid.

The law of July 20, 1912, introduced the practice of making allowance for the time of detention before trial in reckoning imprisonment and fines.

Here again the most significant advance in the subject under discussion has been in the field of juvenile law. To begin with it reduces punishment for minors in general: the sentence shall never be imprisonment, but rather detention in every case. Life imprisonment is replaced by detention for a period not to exceed ten years; the upper limits of all prison sentences are reduced by half. The consequences usually attaching to a conviction, such as loss of the right to hold office, of academic title, of the right to vote, do not follow. Expulsion from the state or from any part of the state is omitted if this would entail any danger of neglect. Moreover the law gives the court four more special powers in order to make possible the broadest individualization, always provided however that the youth is judged guilty. The court may, if the offense is trivial, administer a reprimand to the culprit and require no further punishment. It may further, instead of ordering a small fine or confinement, entrust minors to the discipline of educators or school. In the third place it may employ the real qualified sentence. The pronouncement of the sentence will in this case be delayed for a probation period of one to five years and an effort will be made to prevent regression by means of educational measures and instruction or supervision. If these means are not effective for correction, the penalty must eventually be imposed and carried out. If the probation period is gone through with satisfactorily, the sentence will be considered fulfilled. It goes without saying that the court may also employ the qualified sentence in the case of minors. Finally, the law also introduced the indeterminate sentence, which I advocated for incorporation in the Austrian legislation as much as fifteen years earlier. The presumption is that the court, although recognizing the necessity for a longer sentence is still not able to determine exactly what length of time will be most beneficial to the youthful culprit. The maximum that may be imposed by the court may not exceed the limit of the penal sentence set by law for the deed committed; it may never exceed ten years.

### *Rehabilitation*

An important step in the direction of turning to account the idea of recompense in penal law, of making it easier for a convict to take his place in civilian society after having served a sentence and of encouraging him to do this, is the rehabilitation law of March 21, 1918. Upon application of the convict to the court it is declared and decreed that he shall henceforth rank as though he had never been punished. Hereafter he is not required to acknowledge in answer to question of either court or other authority, that he has served sentence. The Penal Registration Bureau (the police headquarters in Vienna) keeps a record of all judicial sentences and gives information on application of authorities. When a sentence has been annulled, it may no longer be made known. The conditions for annulment are a clean record at the time of condemnation and during the probation period of fifteen, ten or five years (according to the severity of the offense); and finally, restitution as far as is possible. Sentences of more than two years in prison are not subject to annulment, except in the case of political misdemeanors or condemnation of minors; in the latter case also shorter annulment terms are valid.

### *The Workhouse*

Real improvement in the judicial control of crime requires not only careful and if possible encouraging treatment of the well-meaning acute criminal but also the strict discipline of the chronic criminal. It has been detrimental to the reform movement that this second side has been badly neglected. This is true even in Austria. Yet here we have made one progressive step, if only one. As early as the preceding century the counties founded institutes for compulsory labor. Upon conviction for vagrancy, begging, and other similar misdemeanors, the courts may decree that it is legal for the convict to be committed to such an institution after he has served the required sentence of detention (usually a short one). The actual commitment devolves upon the administration, and the confinement may not exceed three years. The law of July 23, 1920, aimed to make the work houses serviceable also for the protection of society against chronic hardened criminals. Anyone who, after having served two terms, is sentenced to not less than six months imprisonment for a crime and shows an inveterate disinclination for an orderly life, may be declared a subject for an institution. The maximum time prescribed in these cases is five years, but the exact time for each in-

dividual case is not determined beforehand. The way was paved for another step forward by the law of June 10, 1932, but this has not yet gone into effect. According to this county work houses established by the government take the place of the institutions for compulsory labor. The courts will then be able to arrange commitment to these institutions directly.

The question of conditional release will be discussed below.

### *The Special Part of the Penal Law*

Improvements in this field are various.

The Penal Law Code comprises many offenses that simply conflict with good order and do not require judicial punishment. The Penal Law Act of 1932 abolished many of these offenses from the penal law code and gave them to the administrative authorities. This served to disencumber the courts and made it possible to make the punishment fit the offense.

It is an indication of the efforts toward moderation discussed above that the law of December 5, 1918, separates misappropriation from theft and embezzlement and distinguishes imposture from fraud. Pilfering is appropriation of goods of little value out of need, through thoughtlessness or to satisfy a desire. Imposture denotes surreptitious entrance into conveyances of public transportation companies or sneaking into performances where the admission fee is only a small one. The punishment is considerably less than if the offense were judged as theft or fraud. Moreover there are no legal consequences following on condemnation for these delicts; the consent of the injured party is necessary for prosecution (§§467 and 467a Penal Law Code).

### *Extension of Judicial Protection*

The question of defense of honor is dealt with in the Penal Law Act of 1929, according to which for libel through the press a fine not to exceed 10,000 shillings may be imposed in addition to the punishment. This same law moreover provides for the punishment through loss of credit of anyone who makes or disseminates untruthful statements calculated to harm the credit standing or the business or professional integrity of another.

The purpose of the law of January 26, 1907, is to protect the freedom and purity of the elections in all law-making bodies as well as all other bodies designated by law for the regulation of public



affairs. It provides for the punishment of active and passive corruption at elections, of compulsion of votes, circulation of false reports, forgery, hindrance and frustration of election, unauthorized exercise of the right to vote, violation of electoral secrecy, and interference with electoral campaigns.

The law of the year 1870 against compulsion of workers to the wage strike and compulsion of employers to the lock-out has been replaced by the so-called Anti-terror Act of April 5, 1930, which opposes organized strikes and similar interferences with the freedom of work and enforces the right of free assembly.

Socially and politically the ordinances against exploitation are important as protection for incompetents. In this connection it must be mentioned that the usury law of October 12, 1914, not only dealt more clearly with the then current practices of usury in connection with credit houses and made the penalty more severe, but also penalized exploitation through foreclosure of cash payments (the so-called usury of goods), if the party in question carried on this practice as a business. The laws at the time of the war and immediately afterward against price baiting (the last one was that of March 9, 1921, and had to do with demanding an obviously exorbitant price for goods or service) lose their force now on account of the altered conditions of business. There is today a surplus of goods instead of a deficiency, a decreased rather than an increased demand. Hence the laws at present are only effective in the case of price excesses on the part of trusts. The modification of the "Krida" law (the law of December 10, 1914, §§205a ff. and 485 ff. of the Penal Law Code) was an important legislative improvement, but on account of the great difficulties of proof it has proved of very little practical use.

Two laws of recent years have filled long felt lacks in the Penal Law Code. The law of September 25, 1923, against unfair competition designates the following as punishable on private accusation: untruthful advertising, disparagement of an enterprise, active and passive bribery of employes or agents for purposes of competition, violation of trade or business secrets and misuse of confidential matter. The law of December 1, 1931, was necessary in order to make possible the proper penalization of business dishonesty. The subject concerned is abuse of authority on the part of a trustee of another's property with the intention of personal gain and consequent increased property liability for the other party. It makes no difference whether the right to administer property

or to act for another is granted by law, by mandate of an authorized body or by a law firm. The act is penalized as a misdemeanor, or if the injury is serious, as a crime.

Although it is somewhat out of the field of criminal justice, it may be pertinent to mention the progress represented by the administrative penal law dated July 21, 1925. It formulates general precepts in the modern sense (frequently based on the Penal Law Draft of 1912). The procedure in penal affairs of the administration is also dealt with in this, and the law concerning general administrative procedure of the same date is revised in a fashion which may be considered exemplary.

### *Penal Procedure*

The Austrian Penal Procedure Act of 1873 is in accusative form, based on the principles of oral procedure and direct action, and thus represents the type of legal process which is still in force today. The district courts arbitrate through individual judges on violations; crimes and misdemeanors belong to the higher courts. The latter arbitrate according to the penal procedure act as courts of assizes if they are dealing with crimes for which there is a severe penalty, or with political or press delicts. Otherwise they arbitrate as court of preliminary investigation with a forum consisting of four appointed (not elected) professional judges who are appointed, not elected. The Penal Procedure Act of the year 1920 replaced the courts of hearing with forums of unpaid magistrates. These forums are made up of two magistrates and two professional judges. The magistrates are full-powered judges while the jury decides only questions of guilt. At the same time that the courts of magistrates were created the jurisdiction of the courts of assizes was limited. Nothing counts as severe penalty except a penalty of at least ten years. The Penal Procedure Act of 1929 removed press delicts also from the jurisdiction of the courts of assizes, and their jurisdiction is further limited by the Juvenile Court Law. The courts of assizes are particularly subject to political influences; they are quite willing to act as courts of favor or to give a verdict of not guilty, because they are helpless in the face of complicated matters or difficult legal questions. The general consensus of opinion is therefore that this reform constitutes real progress. A government bill recently introduced into parliament proposes further to withdraw from the assize courts for a period of several years adjudication over charges of murder and homicide, because recently the unwar-

ranted acquittals have noticeably increased and the indignation and resentment of the public have been aroused. Neither higher education nor bonds are required for the position of lay judge. The fact that women are also eligible may be variously regarded; we consider it quite justifiable.

Unquestioned and significant progress was initiated by the Juvenile Court Law of 1919 and definitely formulated by the law of July 18, 1928. In Vienna, the only large city in Austria with nearly two million inhabitants, there exists at the present time an independent juvenile court, in which the administration of guardianship and complete penal jurisdiction over minors have been combined, and which has its own juvenile prison. Moreover special juvenile district courts may be formed or on the other hand jurisdiction over guardianships and penalties may be assigned by edict to the same courts and judges.

In juvenile cases—criminal cases against persons who at the time of institution of proceedings have not completed the eighteenth year—the court of assizes is competent only in accusations for political delicts; otherwise the cases always belong to the court of magistrates. The register of magistrates for these courts is specially made up so as to include teachers and social workers. These juvenile magistrates take part also in the proceedings and adjudications of the second court in so far as this is not concerned with a plea of nullity, that is with questions of legality. This is so far the only instance in which lay judges take part in second court. The forum in this case consists of three unpaid magistrates and two professional judges. The judges who act in juvenile cases are appointed on the strength of their pedagogic qualifications; they must have served previously as guardianship judges and have had special training in psychology, psychiatry or pedagogy. In the public prosecutors office the handling of juvenile cases is usually entrusted to a civil magistrate (juvenile public prosecutor).

The most important precepts specially designed for procedure in juvenile cases originate in the concept of education, which occupies the foreground in juvenile criminal jurisprudence, and in the effort to check, so far as possible, influences that are detrimental to education and the operation of penal procedure. Thus the public prosecutor may entirely omit the prosecution if the act is trivial, if the decrees for the necessary guardianship have already gone into effect and are proving effective, or if the court would probably only pronounce a reprimand to the youth. Private accusations, e. g., for libel,

are entirely inadmissible. The public prosecutor may carry on the prosecution in place of the private complainant if it seems necessary for pedagogic reasons or on account of important interests of the injured party. An important feature is the cooperation of the Juvenile Court Counsel which serves to investigate the personal circumstances of the youth, to supervise him, and to render him assistance in the proceedings. The law provides also for the formal defense of a juvenile defendant. In superior court proceedings an attorney serving without fee must be assigned him (advocate for the poor) if he is not in a position to bear the costs of defense; in the district courts this must be done in all important or difficult cases. For the main trial before the district courts formal defense is prescribed in case of contestability of the verdict.

The legal representative of the juvenile must be informed of all important orders of the penal procedure, he has the right to be present at the trial and to take legal measures for the youth even against the latter's will.

Custody is if possible replaced by other appropriate orders such as placement in a family or an educational institution. A private instead of a public trial may be ordered out of consideration for the youth and for the same reason public announcement of the verdict may be withheld. When discussions are going on which might influence the youth unfavorably (for instance discussion of his mental condition) the court may allow him to leave the courtroom. If the youth does not appear at the trial it is inadmissible to proceed with the trial without him. Likewise mandate proceedings—decree of a penal sentence solely on the basis of notice—are not allowed in the case of juveniles.

Indemnity on account of unwarranted condemnation has been allowed by the Austrian legal code since the end of the past century. at first however it was allowed only when a person legally convicted is subsequently acquitted or the prosecution is quashed. Since 1918 indemnity may be claimed also when the convicted person is again convicted in a new trial if this time he is sentenced to a less severe punishment in accord with a milder penal measure. The law of August 18, 1918, introduced liability of the state for indemnity for custody. Presumptions are: loss of capital through custody, ending of the prosecution through acquittal or quashing; finally if a well-grounded suspicion warranting prosecution and imprisonment was lacking from the beginning or ceases to exist before imprisonment is ended, this lack may not become known until afterward. The claim

is not admissible if the prisoner has brought about the custody intentionally or through gross carelessness. For certain special cases, for instance acquittal or suspension owing to irresponsibility of the wrong-doer, it is left to the discretion of the court whether the claim for indemnity shall be wholly or partially denied.

### *Criminology and Criminal Police*

Progress in the detection and reporting of crimes is dependent on progress in different fields of natural science and technology, and on the scientific use for the purposes of penal procedure of the technics developed in these fields. It depends also on certain arrangements designed to make these progressive measures and the results of scientific experiments known to the various bodies concerned with penal procedure; it depends next on their introduction into the practice of courts and bar, of lawyers, police and gendarmes. Such progress in the sciences is not for the most part confined to one country. Yet Austria may point with pride to one man, Professor Hans Gross, the originator of scientific research in criminology, whose masterpiece "Manual of Judicial Inquiry for Judges as a System of Criminology" has been circulated in all civilized countries. It was he too who first introduced regular lectures on criminology and criminal psychology in the University of Graz and founded there a university institute of criminology, the first of its kind, with a very complete criminal museum in connection with it. The Institute has been carried on by Gross' successor, Professor A. Lenz, and the plan of instruction has been greatly extended. *Lenz* is particularly interested in criminal biology; he with his co-workers examine the prisoners in the penal institute at Graz and he thus introduces his pupils to methods of investigation. The establishment of a station for criminal biology in Vienna, which will be spoken of later, was initiated by him.

In the year 1922 the author of this report founded the University Institute for Jurisprudence and Criminology in Vienna. Like the Institute at Graz it serves both for research and for instruction. The plan of instruction embraces criminal etiology, and phenomenology, criminal statistics, penology, criminal policy, criminal psychology, psychology of penal procedure, criminalistic technology, criminal tactics, criminalologic and criminalistic exercises, sessions for discussion and demonstration of types of criminals. At the University of Innsbruck there is still no criminologic Institute, yet even their lectures are given on criminal psychology, psychology of testimony, and sci-

ence of imprisonment. Austria has for many years had well equipped institutes for legal medicine in connection with all medical schools. These institutes arrange regular courses on legal medicine for jurists. Lastly, there remains to be mentioned the lectures on forensic psychiatry.

Progress in criminology and criminalistic technology is put at the service of criminal justice without any difficulties of legal procedure because the right of evidence in our penal process ordinance is based on freedom of search for truth and value of evidence. With the exception of a few slight and unimportant limitations the judge may use every source of information, may admit as evidence any circumstance, which affords a key to any other. The use of police dogs was soon introduced, not only to give valuable service to the police in their pursuit of crimes, but for evidence at the trial.

To instance certain fields in which we feel that definite progress is especially prominent, we may mention the extensive use of photography including photo-grammetry, use of the microscope and of invisible rays, particularly the ultraviolet. Evidence from the examination of dust has become of great importance in many trials, comparison of handwriting and the detection of the use of mechanical writing is put on a scientific basis, the proof of forgery is now so developed and refined that—except in very extraordinary circumstances—every forgery may be considered detectable. The University Institutes of Criminology in Vienna and Graz make reports to the court in many penal cases, most often in regard to forgery but also in other fields, and answer questions concerning the jargon of criminals, superstitions, and so on.

In 1924 the directors of the police force in Vienna founded a criminalistic institute in order to give police officers a better kind of training in criminology. The curriculum is very comprehensive and includes, beside the subjects usually taught in the university institutes, lectures specially adapted to the needs of police officers on such subjects as anthropology, chemistry, commerce and so forth. Toward the end of 1929 the police directorate of Vienna founded a bureau for criminal biology whose business it is to examine certain designated persons before they are turned over to the penal court. The examination is carried out by specially trained police officers with the assistance of official physicians, and is based on a very detailed inquiry blank which follows the model by Professor A. Lenz. Examination is required of all juveniles, certain categories of dangerous criminals (e. g., all murderers) and other specially important

cases. The results of the examination can be used by the courts for the better understanding of the personality, and the more intelligent adaptation of punishment. Furthermore the examination sheets are gathered together and under the direction of Professor Lenz are used for purposes of scientific research.

Another important innovation is the introduction of Poller's method of casting molds, a method which makes it possible to produce on very short notice the most exact and true reproductions of corpses, parts of the body, criminal instruments and so forth. In order to improve supervision over all court sentences, a Penal Registration Bureau was founded at the police directorate of Vienna in 1920. The courts must report every sentence to the bureau by sending in a card which also gives exact information concerning the personal circumstances of the convicted person. Subsequent changes in the sentence, recall of a conditional liberation, acts of pardon and so on are to be reported. The bureau keeps a register of all sentences through the domestic courts; of condemnation of citizens through foreign courts; and furthermore on the basis of as provided by international treaties, of sentences of foreigners through foreign courts so far as the circulation of obscene literature and white slavery is concerned. Any court and any public prosecutors office can find out the criminal record of any citizen through inquiry at the Penal Registry Office; other authorities may do the same, but no information is given out to private individuals.

The publishing of warrants, petitions for search, description of lost or missing persons, description of mental patients or children who have been found, of bodies found, descriptions of stolen, robbed, lost and found articles and descriptions of important criminal cases are all taken care of by a daily bulletin published as the result of the new tracing or pursuit act of 1928. This is intended for separate divisions of the federal domain while the Central Police News published by the police directorate serves the same purpose in Vienna. The directorate also conducts a central bureau for tracing evidence and gathers together all the material contained in the above-mentioned papers in different evidence. The systematic list of the names of all published persons constitutes the same evidence; all the unknown persons with distinguishing characteristics who are wanted for a penal procedure form the "person and agent" evidence; the list of all crimes the perpetrators of which are unknown constitutes the "factual" evidence; and the list of all unlawfully lost articles the "material" evidence of articles. The directorate in Vienna publishes twice

a month a summary of the most important items in the evidences ("keys").

Out of this method of handling evidence have grown other systems based on recognition of the fact that centralization is an important requisite for effective action against modern crime. Hence since 1912 the police directorate in Vienna has acted as the central point for attack on obscene publications, since 1928 as central evidence for unlawful traffic in narcotics and as the Austrian central office for dealing with international crime, and since 1929 as Austrian central office for detection of counterfeiting according to the provisions in this regard made by the international convention of April 20, 1929.

When the International Criminal Police Commission was founded Austria, as is well known, played a prominent role under the leadership of the late president of police and chancellor of the confederation, Doctor Hans Schober. Several divisions of this commission have their headquarters at the police directorate of Vienna, namely, the International Central Commission for the detection of counterfeiting of gold, checks and securities, the International Commission for detection of forged passports, and the "International Bureau." This latter comprises the information service in regard to international criminals, the international tracing evidence and the international evidence of injuries to the commonwealth, the international transmission of fingerprints and the collection of photographs of international criminals. In this latter service thirty-six police organizations of the world cooperate.

Also in connection with the international commissions taken over by the Vienna police directorate it is of great significance that since 1927 there has been in existence a private police broadcasting service. The main broadcasting station is located at the police directorate in Vienna, while there are others in nine of the larger cities of Austria. Through the main broadcasting station in Vienna this network is linked up with the international system of police broadcasting established in 1929, which includes besides Austria, Belgium, Germany, Holland, Poland, Rumania, Czecho-Slovakia, Hungary and, in international trade affairs also, Danzig and Switzerland.

### *Prison System*

The most important and practical reform is the introduction of the conditional release through the law of July 23, 1920. It is conditional in that the prisoners serve two-thirds of the sentence or at



least eight months, or in the case of minors at least six months, that he repair the injury of which he is guilty to the best of his ability, and that he behave well when he is free. In the case of life sentences the penalty may be removed after fifteen years. The probation period is the remaining time of the original sentence, but one year is the minimum or in the case of life imprisonment fifteen years. As in the case of conditional liberation instructions may be given the discharged party with a view to preventing a relapse. Regulations as to supervision apply as in the case of the indeterminate sentence. If the liberation becomes final, the entire penalty is considered as discharged.

The fulfilment of penal sentences by young prisoners (fourteen to eighteen) has been made a matter of educational purpose by the juvenile court law already so frequently referred to. Every contact of youthful prisoners with adults is avoided; this is brought about in various ways. Sentences of less than a month may be served in institutions that do not belong to the government but are declared suitable by the department of justice, for example, county institutions for youths in need of education. Moreover there are in some cases juvenile prisons—for instance in connection with the juvenile court in Vienna—that take only minors; sometimes there will be special juvenile divisions of judicial prison houses in penal institutions, built so that there may be no communication between the juvenile and adult prisoners; and last of all there are juvenile groups. The prison system is fundamentally communal. In the choice of officers and overseers pedagogic understanding is of the first importance, then knowledge of psychology, psychiatry and pedagogy. The prisoners must be treated seriously and kindly, their self-respect guarded and encouraged. They receive regular schooling; gymnastics, sports and games help their physical development. No matter to what sort of imprisonment they are condemned they must perform the duties that are assigned to them. So far as the duration of the punishment permits, they are trained to some vocation which suits them and which will afford them a livelihood in the future.

The infliction of punishment shall not become a routine matter but shall be suited to the personality of the individual. The criminal-biologic examination sheets are as important in formulating the execution of the sentence as they are in deciding guilt and penalty. The law allows a particularly broad interpretation of the sentence in the case of prisoners who on account of illness or abnormality require

departures from the rules. In these cases if the physician so advises solitary confinement may be prescribed, or special diet, occupation, instruction and physical exercise. Such prisoners are under the constant supervision of the physician; when possible a special part of the prison is assigned to them.

General precepts concerning special treatment of mentally inferior and drink addicted criminals and concerning institutions for safeguarding mentally deranged criminals have been provided for in the drafts but up to the present have not become laws.

For sentences of over a year, which are to be served in penal institutions, execution in installments (progressive system) has been introduced; there are three classes; unfortunately there is no organic connection with the conditional liberation.

Control of the execution of sentence through publicity and the use of laymen for this purpose are ideas which since 1872 have been put into practice. Since 1921 the rule has been that there be appointed for every court prison and for every penal institution, three trustworthy men who are authorized to visit the prisoners, to receive requests and complaints and to report them together with their observations to the proper official.

A number of other improvements such as enlargement of prison libraries, holding of instructive lectures and musical performances can only be briefly mentioned.

Since 1925 Austria has cooperated with the International Penal and Penitentiary Commission. Her prison organization naturally corresponds completely with the regulations proposed by the Commission for the treatment of prisoners.

### *Prevention*

The prevention of crime means above all care of children and youths and their protection from criminalistic influences. The professional guardians of children are first of all the parents. It is part of the art of prevention to enable and encourage the parents to fulfil their duties and to see to it that influences and conditions of life are avoided which might alienate them from their children. This subject is really so broad that it takes in practically the whole field of social and political legislation. This has been extensively developed in Austria during the past few decades, indeed, in the opinion of many, too extensively in relation to the economic capacity of the country. It is impossible to go into all of the many ramifications of this question here. I shall only mention briefly the develop-

ment, particularly in the cities and especially in Vienna, in the care of women during pregnancy and child-birth, and the law of 1919 concerning adopted children and the regulations for the protection of infants placed in foster homes.

Another important step in our field is the law of February 4, 1925, in support of legally regulated claims for maintenance. It puts the fact of breach of duty in the performance of legally fixed maintenance under threat of punishment. Punishment devolves upon anyone who through gross failure in his duty of maintenance exposes to want or neglect the party to whom maintenance is due. It is accounted gross negligence also if the party obligated to provide maintenance and from whom such maintenance cannot be collected wilfully avoids opportunity to obtain an income. A law of July 7, 1922, sought to limit the dispensing of alcoholic beverages to minors. It is forbidden under penalty for anyone to offer an alcoholic drink to a minor (person under fourteen years) in a saloon, to give such drink or allow one to be given him to drink. Nor may a drink of this nature be offered to a person under sixteen years in any bar or retail house handling alcoholic beverages. The liability extends also to the proprietor or lessee of bars and saloons who allow an employee to be guilty of one of these forbidden acts. The above regulations are required to be posted in a prominent place in all saloons. Lastly we may mention here improvements in the protection of youths against obscene literature. A school board or a juvenile office may forbid the distribution of certain printed matter to youths under eighteen years of age, they may also forbid their sale altogether by street vendors (colportage) or newspaper agents if through the exploitation of juvenile propensities they endanger the moral welfare of the young (Press Law of the year 1922). A penalty will be imposed on anyone who offers or hands over a piece of obscene literature to a person under sixteen years of age for a remuneration, or without remuneration displays, posts or otherwise makes public such literature so that its objectionable contents are accessible also to a large circle of persons under sixteen years of age. Such penalty will further be imposed on anyone who shows an obscene moving picture to a person under sixteen for a consideration. It is highly significant that in the same category with obscenity is included everything that is calculated to arouse or pervert sexual feeling so that not only the sense of shame but also the healthy sexual development of youth is protected (Penal Law Reform Act 1929).

The twentieth century has been called the century of the child.

As regards measures of legislation and administration in Austria this designation is also justified. Indeed the ground work was laid in our civil code of 1811. According to its concepts the parents were responsible first of all for the welfare of the children. If parental authority is misused or there is neglect of duty however anyone may appeal to the court for help. Minors (under twenty-one years) who have no father to care for them must be provided for by the court through the appointment of a guardian whose duties must be supervised by the court. This branch of activity of the court is called guardianship jurisdiction (*Vormundschaftsgerichtsbarkeit*). Through the introduction of professional guardianship and orphans councils, through the establishment of juvenile offices at the different county administrative departments and in the larger cities, through the juvenile court aid and finally through the establishment of innumerable private and semi-private organizations for infant protection and child welfare the courts are now well supported in their activity and the complete fulfilment of an ambitious program is made possible for the first time.

In this connection special mention must be made of the precepts and directions, credit for which may be given to the Juvenile Court Law of 1928. Since the Juvenile Penal Code has already been discussed, we need mention here only the purely educational measures. The court must order such measures as these immediately, if anyone under the age of eighteen is guilty of a punishable act; whether it is a true minor or a youth between the ages of fourteen and eighteen the question of whose responsibility has not yet been determined. The court communicates with the juvenile office or the proper authorities of the juvenile court aid and may under certain circumstances turn over to them the further care of the youthful offender. Otherwise the court may choose from the following procedures: educational supervision, placement in a family, a juvenile children's home or some other institution, or assignment to a federal institution for those in need of education. The establishment by the government of several such institutions was of decided importance for the reforms of 1928 and the conditions of today. The existing private, community and county institutions were not sufficient, or they did not wish to take youths who were under serious accusation, or they were not adapted for such cases. At the present time the existence of federal educational institutions under the federal minister of justice guarantees that every youthful offender in need of such institutional supervision can be accommodated. These

institutions have a most difficult task, indeed it is true, for they have to deal chiefly with young offenders, the ones who are most in need of education.

The pupils of the institution receive instruction and training for a vocation. They are kept busy out-of-doors much of the time, preferably at gardening and farm work. A commission of five members is responsible for the careful observance of the precepts regarding the treatment of pupils; they visit the institute at least once a month and receive complaints from the pupils. The members of the commission are named by the minister of justice and perform their obligations as honorary members. The pupil remains at the institute as long as it is serving its educational purpose but in no case does he remain after the completion of his twentieth year of age. After a stay of a year and a half the director of the institute may entrust the pupil to a responsible family, transfer him to another educational institution or find him a place in some profession or trade; three years after entrance the director may dismiss the pupil. If the commission agrees, such changes as these may be made even earlier. Countermand of the dismissal or of one of the other arrangements appertains only to the commission. A pupil even after dismissal remains under the supervision of the director of the institute until he is twenty-one. A good many of the pupils keep in touch with him even after this time.

In order to practice certain trades in Austria an apprenticeship of a definite time and a certificate of apprenticeship or a journeyman's letter are required. Hence the importance attaching to the decision of the court that the period of training for a trade under proper professional supervision in a government institution should be reckoned as an apprenticeship for the pupil. The fact that the pupil has been in an institution need not however be mentioned in the certificate or journeyman's letter.

Great progress has been made in the development of juvenile court aid and protective supervision as compared to the state of affairs at the turn of the last century. The juvenile protective movement has received particular impetus from the oratorical and literary efforts of Reicher, Baernreither, the first juvenile court judge Fiatta, and Franz Klien. The latter aided through numerous decrees dating from the time when he served as minister of justice. Another strong impetus was given by the Austrian Juvenile Protective Congress; the Central Bureau for Child Care and Juvenile Protection founded by Baernreither constituted a sort of spiritual center, publish-

ing journal of child care and family and professional welfare now in its twenty-fifth year.

The juvenile court aid is formed of all officers, corporate bodies, companies and persons concerned with juvenile welfare. The juvenile offices mentioned above take the first place. If there are a number of corporations or companies in one place all concerned with juvenile court aid, the court sees to it that a joint central business office is established if possible in the courthouse. These organizations for juvenile court aid, besides making examinations and assisting in penal procedures as mentioned above, seek to arrange for educational supervision, see that instructions are obeyed which are given in connection with qualified sentence, conditional liberation and conditional dismissal, and have protective oversight over all these cases and the measures so vitally important for successful prevention. If there are not enough private organizations for this protective oversight in connection with the courts, the federal police must appoint special custodians. These must be responsible men and women with an understanding of educational needs; persons who are already in public service may be appointed but not civil or criminal police.

Naturally the individual preventive measures are not confined to juveniles; the supervision of an officer may be ordered for adults particularly those under conditional sentence or on conditional liberation or dismissal.

Innumerable successful innovations have originated at the police directorate at Vienna and since this city, the capital of Austria, comprises a third of the total population of the country, its measures for welfare and protection are of the utmost importance. The police directorate has its own welfare bureau, which receives not only minors who are endangered but others in danger from a propensity for drink, from suicidal inclinations or want. For the temporary care of such minors a juvenile home has been founded by the police. In 1932 a home for the moral protection of women and girls was opened by the police with female welfare officers in charge. Before discussing the important innovation of police women, a few general remarks concerning prostitution may be made. The attempt is being made to prevent girls and women from falling into the way of prostitution by caring for them. Prostitution, however, is not specifically forbidden but rather it is controlled from the standpoint of combatting venereal diseases. Prostitutes are required to report to the police and have periodical medical examinations. Unreported ("secret") prostitution is hunted out by the police and those suspected of such prostitu-

tion are examined by a physician. Whether brothels are to be permitted or not is decided by the local authorities. In Vienna they have been forbidden since 1921.

There are at the present time in connection with the police directorate in Vienna twenty-five police women engaged in controlling prostitution and white slavery. Their duties are chiefly to protect women and girls from immorality and also to protect emigrant and wandering women. They keep watch of automat restaurants, and of public parks and railroad stations; check up on prostitution and sexual offenses; present children, young people and women before the court and place them in institutions; find homes for youths, young women and girls; question and take temporary charge of vagrant and lost children. The police women in dealing with children and youths work in close cooperation with the business office of the juvenile court aid at the court; they also are given oversight over youths and women.

In the handling of drunkards good results are obtained by promising a mild penalty to those who have been sentenced to punishment for drunkenness if they join a temperance organization and live up to its rules.