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Criminal Penalties for Vagrancy--Cruel and Unusual Punishment under the Eight Amendment ?

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Criminal Penalties for Vagrancy—Cruel and Unusual Punishment Under the Eighth Amendment?

ACCORDING TO recent judicial pronouncements, treatment of a narcotics addict[1] or a chronic alcoholic[2] as a criminal may violate the eighth amendment prohibition[3] against cruel and unusual punishment. Such decisions have raised serious constitutional questions concerning the punishment of persons having a "status" similar to drug addiction or alcoholism. Thus, it is reasonable to inquire whether the punishment of persons for vagrancy or related crimes of personal condition constitutes cruel and unusual punishment under the eighth amendment. While it is clear that the amendment now applies to the states as well as to the federal government,[4] the Supreme Court has failed to provide any distinct standards for applying its proscription to other crimes.

This Note will therefore discuss vagrancy laws as they exist today, and an attempt will be made to formulate constitutional guidelines for applying the cruel and unusual punishment clause in conjunction with the existing standards applicable to the crime of vagrancy. In addition, the inadequacies and abuses of vagrancy laws will be shown as a basis for proposed alternative methods for dealing with the problem.

I. BACKGROUND OF THE CRIME OF VAGRANCY

A. Purposes and Description of Vagrancy

The nature of the crime of vagrancy can be more easily understood by examining the purposes for its existence. Vagrancy statutes are derived from English laws which were designed to prevent worker migration, as well as to prevent crimes and supplement laws regulating the poor by forcing idle persons to work. It is generally agreed that such laws exist today primarily as crime-preventive measures; the other purposes are merely historical.[5] Basically, it is pre-

[1] Robinson v. California, 370 U.S. 660 (1962).

[2] Easter v. District of Columbia, 361 F.2d 50 (D.C. Cir. 1966). *But see* Budd v. California, 385 U.S. 909 (1966); Driver v. Hinnant, 356 F.2d 761 (4th Cir. 1966).

[3] U.S. CONST. amend. VIII: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

[4] For a discussion of this expansion, see note 51 *infra* and accompanying text.

[5] Ledwith v. Roberts, 1 K.B. 232, 270-77 (C.A. 1936). See generally 3 STEPHEN,

sumed that anyone who can be classified as a vagrant is likely to commit a future criminal act from which society should be protected.[6] It is generally thought that "a vagrant is a probable criminal; and the purpose of the [vagrancy] statute is to prevent crimes which may likely flow from his mode of life."[7]

At common law any able-bodied person who traveled from place to place with no visible means of support was considered idle, and one who refused to work for his maintenance was deemed a vagrant.[8] The common law definition of vagrancy is no longer of much importance because it is now a statutory offense in virtually every state in the country.[9] However, in a few states where the term vagrant is used without having been defined, the common law definition remains important.[10] In addition to being made a crime

A HISTORY OF THE CRIMINAL LAW OF ENGLAND 266-75 (1883); Perkins, *The Vagrancy Concept*, 9 HASTINGS L.J. 237 (1958).

[6] Modern courts and legislatures are frank in their recognition that vagrancy statutes are aimed at the potential criminal. See, *e.g.*, *Ex parte* Karnstrom, 297 Mo. 384, 394, 249 S.W. 595, 597 (1923); State v. Grenz, 26 Wash. 2d 764, 771, 175 P.2d 633, 637 (1946).

[7] It is generally thought that "a vagrant is a probable criminal; and the purpose of the [vagrancy] statute is to prevent crimes which may likely flow from his mode of life." District of Columbia v. Hunt, 163 F.2d 833, 835 (D.C. Cir. 1947). See also authorities cited note 5 *supra*.

[8] People v. Scott, 113 Cal. App. Dec. Supp. 778, 296 Pac. 601 (Super. Ct. 1931); People v. Belcastro, 356 Ill. 144, 190 N.E. 301 (1934); *Ex parte* Hudgins, 86 W. Va. 526, 103 S.E. 327 (1920).

[9] ALA. CODE tit. 14, § 437 (Supp. 1965); ALASKA STAT. § 11.60.210 (1962); ARIZ. REV. STAT. ANN. § 13-991 to -993 (1956); ARK. STAT. ANN. §§ 41-4301 to -4303 (1964); COLO. REV. STAT. ANN. §§ 40-8-19 to -20 (1963); CONN. GEN. STAT. ANN. §§ 53-336 to -340 (1960); DEL. CODE ANN. tit. 11, §§ 881-93 (1953); D.C. CODE ANN. §§ 22-3302 to -3306 (1961); FLA. STAT. ANN. § 856.02 (1965); GA. CODE ANN. § 26-7001 (1953); HAWAII REV. LAWS §§ 314-1 to -7 (Supp. 1961); IDAHO CODE ANN. § 18-7101 (1948); IND. ANN. STAT. §§ 10-4602 to -4603 (1956); IOWA CODE ANN. §§ 746.1-.2 (1950); KAN. STAT. ANN. § 21-2409 (1963); KY. REV. STAT. §§ 204.060, 436.520-.530 (1963); LA. REV. STAT. § 14.107 (Supp. 1965); ME. REV. STAT. ANN. tit. 17, § 3751 (1964); MD. ANN. CODE art. 27, §§ 490, 581 (1957); MASS. GEN. LAWS ch. 272, §§ 63-69 (1959); MICH. STAT. ANN. § 28.364 (1962); MISS. CODE ANN. § 2666 (1942); MO. REV. STAT. § 563-340 (1959); MONT. REV. CODES ANN. § 94-35-248 (1947); NEB. REV. STAT. §§ 28-1115 to -1119 (1943); NEV. REV. STAT. § 207.030 (1965); N.H. REV. STAT. ANN. § 570:25 (Supp. 1959); N.J. REV. STAT. §§ 2A:170-1, -8 (Supp. 1966); N.Y. CODE CRIM. PROC. §§ 887-91 (Supp. 1965); N.C. GEN. STAT. §§ 14-336 to -341 (1951); N.D. CENT. CODE § 12-42-04 (1960); OHIO REV. CODE §§ 715.55, 2923.28; OKLA. STAT. tit. 21, § 1141 (1961); ORE. REV. STAT. § 166.060 (1961); PA. STAT. ANN. tit. 18, § 2032 (1963); R.I. GEN. LAWS ANN. §§ 11-45-1, -3, -10, -11, 14-1-4 (1956); S.C. CODE ANN. § 16-565 (1962); S.D. CODE § 13.1424 (1939); TENN. CODE ANN. § 39-4701 (1955); TEX. PEN. CODE art. 607 (1952); UTAH CODE ANN. §§ 76-19-10, -61-1 (1953); VT. STAT. ANN. tit. 13, § 3901 (1958); VA. CODE ANN. §§ 63-337 to -338 (1950); WASH. REV. CODE § 9.87.010 (Supp. 1966); WIS. STAT. § 947.02 (1958); WYO. STAT. ANN. 6-221 (1957).

[10] See *In re* Jordon, 90 Mich. 3, 50 N.W. 1087 (1892). City of Huntington v. Saylor, 135 W. Va. 397, 63 S.E.2d 575 (1951); *cf.* People v. Sohn, 269 N.Y. 330, 199 N.E. 501 (1936).

by state statute, vagrancy may also be made unlawful by municipal ordinance.[11] While the scope of the crime varies according to the statute or ordinance in question, it may include living in idleness with no visible means of support[12] or being a common prostitute,[13] common drunkard,[14] common gambler,[15] common street beggar,[16] common thief,[17] or any suspicious person who cannot give a reasonable account of himself.[18] Certain acts or failures to act may also constitute vagrancy — for example, wandering or loitering by a member of a certain class or in a certain place,[19] begging,[20] lodging or sleeping outdoors,[21] failure to support one's family,[22] and being a disorderly person.[23]

The term "vagrancy" will be used here in a broad sense so as to include all types of vagrancy offenses.[24] It should be emphasized, however, that there are two general categories of vagrancy crimes: first, those in which proof of a certain status is required and, second, those in which an act or failure to act constitutes vagrancy. In both cases the crime is usually a misdemeanor punishable by fines or imprisonment or both.[25]

Crimes are traditionally defined in terms of committing an act

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11 See City of New Orleans v. Postek, 180 La. 1048, 158 So. 533 (1934). In Ohio, municipalities are expressly given the power to punish vagrancy. OHIO REV. CODE § 715.55. In West Virginia, where vagrancy is not a statutory crime, municipal charters sometimes confer the power to punish it. City of Huntington v. Saylor, *supra* note 10.

12 This is the common law vagrant and refers to "those hangers-on of society, ne'er-do-wells, loafers who stand about our street corners and public places without any visible means of employment and refuse to work when employment can be had." People v. Sohn, 269 N.Y. 330, 333, 199 N.E. 501, 502 (1936). See also D.C. CODE ANN. § 22-3302 (1961).

13 A woman who habitually engages in indiscriminate acts of prostitution. *E.g.*, D.C. CODE ANN. § 22-3302 (1961); WASH. REV. CODE § 9.87.010 (Supp. 1966).

14 An idle or dissolute person who is habitually intoxicated. *E.g.*, MICH. STAT. ANN. § 28.364 (Supp. 1965).

15 *E.g.*, D.C. CODE ANN. § 22-3302(5) (1961).

16 *E.g.*, D.C. CODE ANN. § 22-3302 (1961).

17 *E.g.*, N.Y. CODE CRIM. PROC. § 887.

18 *E.g.*, D.C. CODE ANN. § 22-3302 (1961); N.Y. CODE CRIM. PROC. § 887.

19 *Ibid.*

20 *Ibid.*

21 *Ibid.*

22 *E.g.*, MICH. STAT. ANN. § 28.364 (Supp. 1965).

23 *Ibid.*

24 For a more complete discussion of the scope and statutory definitions of the crime of vagrancy in the United States, see Lacey, *Vagrancy and Other Crimes of Personal Condition*, 66 HARV. L. REV. 1203, 1206-09 (1953); Perkins, *supra* note 5; Note, 37 N.Y.U.L. REV. 102, 108-16 (1962).

25 *E.g.*, D.C. CODE ANN. § 22-3304 (1961); MICH. STAT. ANN. § 28.365 (1962); N.Y. CODE CRIM. PROC. § 901.

or failing to act, but vagrancy tends to punish a person for his condition rather than for acts which he has committed. Thus, vagrancy laws punish a state of being or a present "status." Courts frequently state that the essential element of this type of crime is that the accused must have the "status" defined by the statute.[26] However, this may mean that having a certain personal condition, as evidenced by visible or physical facts or "acts," is a crime. One single act or omission is generally not sufficient to support a presumption that an individual is an habitual thief or a common drunkard because a course of conduct is normally required to prove such a condition.[27] Interestingly, no single act necessary to prove the vagrancy status need be criminal, for one such act is not detrimental to society but a continued course of conduct by an individual who begs or loiters may be damaging.

B. Constitutionality of a Vagrancy Charge

Because there are distinctions between traditional crimes of action and crimes of condition, vagrancy laws lend themselves to attack on several constitutional grounds. Most often they have been challenged for being unconstitutionally vague[28] or as excessively restrictive of personal liberty.[29] Clear and precise language in penal statutes is a requirement of due process.[30] Statutes creating crimes of personal condition are often either vague in defining the offense so that a defendant may not be aware of the accusation against him or so broad that police may easily abuse their wide discretion in enforcement. In some cases the courts have found statutes unconstitutional for vagueness,[31] but most often they have been upheld.

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[26] See Brooks v. State, 34 So. 2d 175 (Ala. Ct. App. 1948); Bower v. State, 135 N.J.L. 564, 53 A.2d 357 (Sup. Ct. 1947); City of Columbus v. Alrich, 69 Ohio App. 396, 42 N.E.2d 915 (1942); State v. Harlowe, 174 Wash. 227, 24 P.2d 601 (1933).

[27] See, *e.g.*, Commonwealth v. O'Brien, 179 Mass. 533, 534, 61 N.E. 213, 214 (1901); Parshall v. State, 62 Tex. Crim. 177, 192, 138 S.W. 759, 766 (1911).

[28] Edelman v. California, 344 U.S. 357 (1953); Lanzetta v. New Jersey, 306 U.S. 451 (1939); People v. Belcastro, 356 Ill. 144, 190 N.E. 301 (1934).

[29] State v. Starr, 57 Ariz. 270, 113 P.2d 356 (1941); State v. Grenz, 26 Wash. 2d 764, 175 P.2d 663 (1946) (dissenting opinion), *appeal dismissed*, 332 U.S. 748 (1947); *Ex parte* Hudgins, 86 W. Va. 526, 103 S.E. 327 (1920).

[30] [A] statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process law." Connally v. General Constr. Co., 269 U.S. 385, 391 (1926). See also Baggett v. Bullitt, 377 U.S. 360 (1964). For a complete discussion of the problem, see Note, *Due Process Requirements of Definiteness in Statutes*, 62 HARV. L. REV. 77 (1948).

[31] *E.g.*, Lanzetta v. New Jersey, 306 U.S. 451 (1939); *In re* Newbern, 53 Cal. 2d 786, 350 P.2d 116, 3 Cal. Rptr. 364 (1960).

The other primary constitutional ground is that crimes of vagrancy violate due process as unreasonable restraints on personal liberty. This charge usually relates to those clauses of the statutes pertaining to loitering, roaming without reason, idleness, and associating with known or reputed criminals. Nevertheless, the courts have generally upheld these statutes.[32] In addition, it has been suggested that vagrancy statutes create unreasonable classifications in violation of the equal protection clause[33] or that, as a crime of status or condition, a person might be repeatedly punished contrary to the prohibition against double jeopardy.[34] However, there are apparently no cases in which either of the latter two grounds have been supported.

In only a few isolated cases and with almost no success has a vagrancy statute been attacked on the ground that it violated the cruel and unusual punishment clause of the eighth amendment.[35] Yet it must be noted that the concept of cruel and unusual punishment has undergone significant development since these decisions. The Supreme Court held in *Robinson v. California*[36] that classification and punishment of a person as a criminal for the status of drug addiction is unconstitutional under the eighth and fourteenth amendments. Subsequently, two federal circuit courts adopted a similar view and extended the *Robinson* concept of cruel and unusual punishment to prohibit similar punishment of a chronic alcoholic.[37] Thus, the cruel and unusual punishment clause may now be utilized to prohibit any punishment whatsoever of certain personal conditions which were once made criminal by statute.[38] An examination of the concept of cruel and unusual punishment as it exists today will aid in determining whether penal statutes on vagrancy impose an unconstitutionally cruel punishment.

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[32] *E.g.*, State v. Starr, 57 Ariz. 270, 113 P.2d 356 (1941); New Orleans v. Postek, 180 La. 1047, 158 So. 553 (1934). *Contra*, Edwards v. California, 314 U.S. 160 (1941).

[33] State v. Hogan, 63 Ohio St. 202, 58 N.E. 572 (1900).

[34] State v. Flynn, 16 R.I. 10, 11 Atl. 170 (1887).

[35] *E.g.*, Stoutenburg v. Frazier, 16 App. D.C. 229 (D.C. Cir. 1900); State v. Hogan, 63 Ohio St. 202, 58 N.E. 572 (1900).

[36] 370 U.S. 660 (1962).

[37] Easter v. District of Columbia, 361 F.2d 50 (D.C. Cir. 1966); Driver v. Hinnant, 356 F.2d 761 (4th Cir. 1966).

[38] Previously, the eighth amendment was invoked only to prohibit cruel methods or excessive punishments. See text accompanying notes 39-49 *infra*.

II. THE CONCEPT OF CRUEL AND UNUSUAL PUNISHMENT

A. Historical Background

The eighth amendment prohibition against cruel and unusual punishment was adopted originally to prevent the government from imposing punishments of a barbaric and inhumane nature.[39] Before *Robinson v. California*,[40] the cruel and unusual punishment restriction had been imposed, first, to prohibit inherently cruel *methods* of punishment and, second, to prevent cruelly *excessive* punishments which were disproportionate to the crime committed.

Historically, punishments which were cruel and unusual because of the method employed included burning at the stake, crucifixion, breaking on the wheel, quartering, solitary confinement, and denationalization.[41] Current methods of punishment which might arguably be included within this classification are whipping,[42] sterilization,[43] the death penalty,[44] and barring a convicted felon from holding public office.[45] While it can be argued that every form of punishment involves some cruelty, the eighth amendment extends only to methods which violate those "evolving standards of decency that mark the progress of a maturing society."[46]

The second category includes those punishments which are excessively cruel in relation to the crime committed. In *Weems v. United States*[47] the Supreme Court stated by way of dictum that excessiveness as well as the mode of punishment may be unconstitutionally cruel. The Court noted that "it is a precept of justice that punishment for crime should be graduated and proportioned to

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[39] See Hemans v. United States, 163 F.2d 228, 237 (6th Cir.), *cert. denied*, 332 U.S. 801 (1947). For a thorough treatment of the cases and background of the eighth amendment, see Note, *The Effectiveness of the Eighth Amendment: An Appraisal of Cruel and Unusual Punishment*, 36 N.Y.U.L. REV. 846 (1961).

[40] 370 U.S. 660 (1962).

[41] Trop v. Dulles, 356 U.S. 86 (1958); *In re* Kemmler, 136 U.S. 436, 446 (1890) (dictum).

[42] In State v. Cannon, 190 A.2d 514 (Del. 1963), the imposition of lashes as a penalty for the commission of a crime was upheld by Delaware's highest court.

[43] Sterilization has been held constitutional by some courts but not by others. Mickle v. Henrichs, 262 Fed. 687 (D. Nev. 1918); State v. Feilen, 70 Wash. 65, 126 Pac. 75 (1912).

[44] Trop v. Dulles, 356 U.S. 86, 99 (1958) (dictum); *In re* Kemmler, 136 U.S. 436, 447 (1890) (dictum).

[45] See Note, *The Cruel and Unusual Punishment Clause and the Substantive Criminal Law*, 79 HARV. L. REV. 635, 638 (1966).

[46] Trop v. Dulles, 356 U.S. 86, 101 (1958).

[47] 217 U.S. 349 (1910).

[the] offense."[48] However, the Supreme Court has been reluctant since *Weems* to impose restrictions against excessive punishments, following instead a policy of leaving such determinations to the discretion of the individual states.[49]

B. The Implications of Robinson v. California

The most recent Supreme Court expression against cruel and unusual punishment came in *Robinson v. California*,[50] where the Court further expanded the eighth amendment's scope by holding that the status of narcotics addiction cannot be made a crime. *Robinson* is significant not only because it is the first decision in which the Supreme Court unequivocally applied the eighth amendment to the states through the fourteenth amendment[51] but also because it marked the first occasion that the Court utilized the cruel and unusual punishment clause to invalidate a legislative attempt to define a criminal offense. In addition to abandoning its previous practice of not interfering with the states' discretion to impose criminal penalties, the Court, in effect, also restricted the states' power to define what constitutes a crime.[52]

Robinson has caused considerable comment and speculation as to what constitutional guidelines should now govern the courts in applying the eighth amendment to other crimes.[53] This is largely due to the difficulty encountered in attempting to determine the precise rationale for the Court's holding. Arguably, *Robinson* provides no authority for the courts to extend the eighth amendment to prohibit punishment of other crimes. Mr. Justice Stewart stated

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[48] *Id.* at 367.

[49] See Rudolph v. Alabama, 375 U.S. 889 (1963) (dissenting in decision to deny certiorari); Louisiana *ex rel.* Francis v. Resweber, 329 U.S. 459, 469-70 (1947) (concurring opinion).

[50] 370 U.S. 660 (1962).

[51] The old line of reasoning was established by *In re* Kemmler, 136 U.S. 436 (1890) which held that the fourteenth amendment does not make the eighth amendment's prohibition of cruel and unusual punishment applicable to the states. In Louisiana *ex rel.* Francis v. Resweber, 329 U.S. 459, 462 (1947), the Court assumed that the fourteenth amendment applied the eighth amendment to the states, but this assumpion was unnecessary to the decision.

[52] Previously, the eighth amendment was invoked only to prohibit cruel methods of punishments or excessive punishments. For a discussion of this application, see text accompanying notes 39-49 *supra.*

[53] See, *e.g.*, Budd v. California, 385 U.S. 909 (1966) (denying certiorari from Ninth Circuit); Driver v. Hinnant, 356 F.2d 761 (4th Cir. 1966) (eighth amendment forbids criminal punishment of the chronic alcoholic for public intoxication). See also Logan, *May a Man Be Punished Because He Is Ill?*, 52 A.B.A.J. 932 (1966); Note, 79 HARV. L. REV. 635 (1966).

at the close of the majority opinion that "we deal in this case only with an individual provision of a particularized local law as it has so far been interpreted by the California courts."[54]

However, a careful reading of *Robinson* suggests several criteria upon which the Court relied in arriving at its holding. The Supreme Court's silence on eighth amendment questions since *Robinson* provides little help in making this determination. Thus, while the majority of the Court probably intended its decision to apply only to that immediate factual situation, it can be argued that the rationales relied upon can be judicially extended to prohibit punishment of crimes similar in nature to narcotics addiction. Indeed, *Robinson* provided a "legal springboard" for the Fourth Circuit to hold in *Driver v. Hinnant*[55] that punishment of a chronic alcoholic for public intoxication is cruel and unusual and thus violates the eighth amendment. An analysis of the possible rationales in *Robinson* might therefore be of some assistance in determining whether penalties imposed for crimes of vagrancy violate the eighth amendment. If the same criteria applied by the Court to drug addiction can be applied by analogy to vagrancy, there is a sound basis for making this consideration.

C. *Rationales of Robinson v. California*

(1) Status or Condition.—The first rationale suggested by *Robinson* is that the criminal law cannot punish a mere status or condition; only acts may be made criminal. This criterion can be deduced from the holding that the status or condition of being a drug addict cannot be made a criminal offense for which the offender can be prosecuted prior to his reformation.[56] The fact that unlawful acts are committed before a person is legally classified a drug addict does not defeat this rationale. The Court stated in its opinion that while a state may punish the use, sale, or possession of narcotics, it cannot punish a person for merely being a drug addict.[57] Nor can a state declare that a person having a particular status is continuously guilty of an offense when he may never have committed an unlawful "act" within that state. In *Robinson*, therefore, the state of California was not permitted to punish a person for

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[54] 370 U.S. at 668.

[55] 356 F.2d 761 (4th Cir. 1966).

[56] Robinson v. California, 370 U.S. 660, 666-67 (1962).

[57] *Id.* at 664, 666-67.

addiction alone, absent proof that he committed a criminal act of use, sale, or possession of narcotics within the state.[58]

The crime of vagrancy has long been recognized as a crime of "status."[59] It is almost universally accepted in American jurisdictions that a person may be convicted for vagrancy without committing any otherwise criminal act.[60] The purpose of vagrancy statutes is not to punish the person for doing overt acts; it is rather to prevent crimes which may flow from a vagrant's mode of life.[61] Therefore, the accepted rationale that punishment of a status is cruel and unusual under the eighth amendment can readily be applied to vagrancy laws. Since most vagrancy laws do not require proof of *mens rea*[62] or of the commission of any overt acts, they punish the mere status of a person who may never have committed an unlawful "act" within the state where he is convicted. Under the status rationale, acts which may have been committed before the individual becomes a vagrant should not be sufficient justification for treating him as a criminal for his present status. Under this rationale, a state would be justified in punishing a vagrant for criminal conduct which creates his status or arises from his status but not for the status or condition itself.

(2) Illness or Disease.—Arguably, the status theory exceeds the language of *Robinson* since it requires a broad reading of the case. The Court was careful to focus attention on the concept that addiction is really an illness or disease which might be innocently or involuntarily contracted.[63] Thus, a second rationale is presented, namely, that a state cannot punish a person for having an illness or a disease. This theory is supported by the Court's examples of other illnesses which cannot be treated as criminal offenses:

> It is unlikely that any State at this moment in history would

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[58] *Ibid.*

[59] For a discussion of this term, see notes 26-27 *supra* and accompanying text.

[60] *E.g.*, District of Columbia v. Hunt, 163 F.2d 833 (D.C. Cir. 1947), where the court stated: "A vagrant is a probable criminal; and the purpose of the statute is to prevent crimes which may likely flow from his mode of life." *Id.* at 835. See also State v. Gaynor, 119 N.J.L. 582, 197 Atl. 360 (Ct. Err. & App. 1938).

[61] District of Columbia v. Hunt, *supra* note 60, at 835. Nevertheless, it must be recognized that certain types of vagrants, for example, the common drunkard or common prostitute, have committed some acts in order to achieve their present status. It is the continued commission of such acts which vagrancy laws seek to prevent, but it is often questionable whether having the status itself is sufficient legal justification for imposing penal sanctions without proof of unlawful acts.

[62] *Mens rea* may be defined as a criminal intent or a wrongful purpose. BLACK, LAW DICTIONARY (4th ed. 1951).

[63] Robinson v. California, 370 U.S. 660, 667 (1962).

> attempt to make it a criminal offense for a person to be mentally ill, or a leper, or to be afflicted with a venereal disease. . . . [I]n the light of contemporary human knowledge, a law which made a criminal offense of such a disease would doubtless be universally thought to be an infliction of cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments.[64]

Indeed, Mr. Justice Douglas went to great length in his concurring opinion to justify treating a narcotics addict as a sick person and not as a criminal.[65]

Under the "illness" rationale it is more difficult to argue that punishment of a person for vagrancy constitutes cruel and unusual punishment because vagrancy clearly is not a physical or mental disease. However, vagrancy does have some characteristics which are similar to addiction. The drug addict feels compelled to continue his habit and can be cured only through intensive medical care. While a vagrant might overcome his plight more easily by obtaining a job to support himself, he too may feel compelled to continue his idle existence. He may be a victim of socioeconomic conditions and a poor environment and may need guidance or temporary welfare relief. It seems sound to say, therefore, that the vagrant also needs to be treated through rehabilitation of some kind. In *Robinson* it was suggested that a state could establish a program for compulsory treatment for those addicted to narcotics in order to better the general health and welfare.[66] Perhaps a similar program would be in order for "treatment" of vagrants.

(3) Involuntariness.—The "illness" rationale lends itself to a more tenable reading of *Robinson* but was probably not the sole criterion that the Court used. It was not the mere imprisonment of the addict which was condemned as cruel; it was imprisoning him *because* he was an addict.[67] A distinction must be drawn between punishing a person who has an illness for the commission of some crime and punishing him *for having* the illness although he has not been convicted of any other crime. The fact that the Court stated that penal sanctions might be imposed against the addict for failure to comply with compulsory treatment effected through civil confinement[68] supports the conclusion that *Robinson* was directed against criminal treatment *for having* an illness.

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[64] *Id.* at 666.
[65] *Id.* at 668-75.
[66] *Id.* at 665.
[67] *Id.* at 667.
[68] *Id.* at 665.

Furthermore, there is a question of whether the Court meant to impose restraints only against the punishment for a personal condition innocently or involuntarily acquired. Thus, the third rationale suggested is that a person may not be treated as a criminal for having a status for which he is not responsible. The "involuntariness" rationale is supported by the Court's statement that addiction is "an illness which may be contracted innocently or involuntarily,"[69] and by Mr. Justice Douglas' observation that "the first step toward addiction may be as innocent as a boy's puff on a cigarette in an alleyway."[70]

Vagrancy laws would not seem to fall within the "involuntariness" rationale because most vagrants voluntarily acquire their status.[71] Those persons who become vagrants involuntarily are in the minority and usually are the victims of periods of high unemployment.

In the final analysis, the "involuntariness" concept is nearly impossible to apply since it requires an inquiry into each individual case. In addition, it does not result from a logical reading of *Robinson* in light of the consideration that an addict at some point usually has a choice as to whether or not he will succumb to the habit. The Court did not restrict punishment to voluntary addicts but instead prohibited punishment of any addict, whether his addiction was involuntary or not.

There can be no assurance that any of the three rationales suggested here can be applied by the courts to decide eighth amendment questions. While it can be concluded that the Court limited the states' discretion in defining crimes by preventing them from treating addiction as a crime, only further refinement by the Supreme Court in future decisions can extend the prohibition against cruel and unusual punishment to other crimes.

III. Noncriminal Treatment of Other Physical Conditions

It is significant that there are conditions or statuses other than vagrancy which are not treated by existing law as criminal offenses. For various reasons, modern society has seen fit to deal with these conditions in other ways. An examination will be made here of drug addiction, chronic alcoholism, insanity, and homosexuality.

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[69] *Id.* at 667.

[70] *Id.* at 670.

[71] See Note, *supra* note 53, at 651.

None of these conditions is treated as a crime, and a person having such a condition generally can be punished only for unlawful conduct. In some cases the condition or "disease" may serve as a defense, thereby excusing the individual for his conduct. If vagrancy can be likened to any of these statuses, the argument for including vagrancy laws within the prohibition against cruel and unusual punishment would be stronger. It is possible that a better method of dealing with vagrancy would be to punish only unlawful "conduct" or, even more liberally, to make the status a defense to otherwise criminal conduct.

A. Narcotics Addiction

Robinson v. California[72] clearly established that an individual cannot be punished for having the condition or status of drug addiction. However, an addict can be convicted on a criminal charge for the use, possession, or sale of narcotics.[73] Thus, while a state may not treat narcotics addiction as a crime, it may make criminal the acts or conduct arising out of or causing the status. Undoubtedly, the holding in *Robinson* was influenced by a strong body of medical science which equates drug addiction with a disease or illness.[74] Since the *Robinson*[75] rationale cannot be precisely determined, it can only be said for certain that it is cruel and unusual punishment to treat a person as a criminal for being a drug addict.

Depending upon the rationale adopted, a broad interpretation of *Robinson* might extend the eighth amendment to prohibit the punishment of a person for being a vagrant.[76] By the same token, the unlawful conduct or acts which cause or arise from the status of vagrancy would be criminally treated.[77]

B. Chronic Alcoholism

In *Driver v. Hinnant*[78] the Fourth Circuit recently held that

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[72] 370 U.S. 660 (1962).

[73] *Id.* at 664.

[74] See, *e.g.*, *Report on Narcotic Addiction*, 165 A.M.A.J. 1707 (1957); Lindesmith, *The British System of Narcotics Control*, 22 LAW & CONTEMP. PROB. 138 (1957).

[75] This deficiency is discussed in text accompanying notes 53-54 *supra.*

[76] A more detailed discussion of this interpretation may be found in text accompanying notes 56-70 *supra.*

[77] Since the Court sanctioned criminal punishments for the use, possession, and sale of narcotics in *Robinson*, an extension of the rule to include vagrancy would punish unlawful acts or conduct arising from the status.

[78] 356 F.2d 761 (4th Cir. 1966).

punishing a chronic alcoholic for public drunkenness is unconstitutional under the eighth and fourteenth amendments. The court relied heavily on *Robinson v. California*,[79] stating that chronic alcoholism is similar to drug addiction in that it also can be considered a disease or illness.[80] Thus, a state cannot punish an individual for an involuntary symptom (public intoxication) of a status any more than it can punish him for a status (drug addiction) involuntarily assumed. The case is summarized in the words of Judge Bryan: "The upshot of our decision is that the state cannot stamp an unpretending chronic alcoholic as a criminal if his drunken public display is involuntary as the result of disease."[81]

The *Driver* case is clearly an extension of the principle enunciated in *Robinson* regarding the proscription of cruel and unusual punishments. In *Driver* the alcoholic was not being punished for his status as the drug addict was in *Robinson*; rather, he was being punished for an act or "symptom" arising from his status. The offense of public drunkenness is the commission of an act, thereby distinguishing it from the crime of narcotics addiction which is defined in terms of being a particular status. The court in *Driver* seems to have adopted the "involuntariness" rationale,[82] noting that public intoxication is an involuntary symptom of the status of chronic alcoholism. Since *Driver*, one other circuit has adopted the same view.[83] In October 1966, however, the United States Supreme Court denied certiorari in *Budd v. California*[84] which presented a similar question. Thus, the constitutionality of punishing a chronic alcoholic for public intoxication is still open to debate.

Vagrancy crimes are generally characterized by punishing the status itself. They have the unusual feature of justifying criminal sanctions on the mere possibility that a criminal act may be committed by a person falling within the prescribed class.[85] As such, they are similar to statutes punishing public intoxication which have as their underlying purpose the safety and protection of the public.[86]

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[79] 370 U.S. 660 (1962).

[80] 356 F.2d at 765. In comparing *Robinson* the court stated: "The California statute criminally punished a 'status' — drug addiction — involuntarily assumed; the North Carolina Act criminally punished an involuntary symptom of a status — public intoxication." *Id.* at 764-65.

[81] *Id.* at 765.

[82] For an analysis of this rationale, see text accompanying notes 67-70 *supra.*

[83] Easter v. District of Columbia, 361 F.2d 50 (D.C. Cir. 1966).

[84] 385 U.S. 909 (1966).

[85] *E.g.*, District of Columbia v. Hunt, 163 F.2d 833 (D.C. Cir. 1947).

[86] Driver v. Hinnant, 356 F.2d 761 (4th Cir. 1966). "It is well within the State's

The crime-preventive purpose which presently justifies treating the status of vagrancy as a crime is questionable in light of *Driver*. That case's extension of the "status" principle set forth in *Robinson* so as to encompass the involuntary symptoms of the status goes even further than an extension of the same rule would have to go in order to prohibit punishment of the status of vagrancy itself. Of course, it must be realized that unlike alcoholism, vagrancy is not generally considered to be an illness nor is it necessarily an involuntary status. Perhaps these distinctions should be weighed against the crime-preventive purpose of vagrancy laws in order to determine whether vagrancy warrants the same protections illnesses receive.

C. *Insanity*

The insane person who commits a criminal act is no longer treated as a criminal; instead, he is recognized as a mentally sick person who should receive medical and psychiatric care and rehabilitation. He cannot be criminally punished for an act committed while he was legally insane, although the same act would constitute a crime if done by a sane person.[87] The underlying theory behind the defense of insanity is that a crime requires an act with intent and that an insane person cannot legally be guilty of any criminal intent.[88] It has also been said that from the standpoint of moral guilt, the insane person is outside the postulate of the legal theory of punishment.[89] In *Robinson v. California*[90] the Court discussed the inhumanity of punishing an insane person in order to illustrate the cruelty of treating one with an illness as a criminal.[91] The Court concluded that it is just as illogical to treat a drug addict as a criminal.

The underlying reason for the Court's analogy in *Robinson* between insanity and drug addiction is not apparent, although the important factor for making insanity a defense to criminal acts is the lack of criminal intent. Yet this principle does not necessarily

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power and right to deter and punish public drunkenness, especially to secure others against its annoyances and intrusions." *Id.* at 765.

[87] See People v. Wells, 33 Cal. 2d 330, 202 P.2d 53, *cert. denied*, 338 U.S. 836 (1949); State v. Pinski, 163 S.W.2d 785 (Mo. 1942).

[88] Handspike v. State, 203 Ga. 115, 45 S.E.2d 662 (1947); State v. Cooper, 170 N.C. 719, 87 S.E. 50 (1915); State v. Brown, 36 Utah 46, 102 Pac. 641 (1909).

[89] *E.g.*, Carter v. United States, 252 F.2d 608 (D.C. Cir. 1956).

[90] 370 U.S. 660 (1962).

[91] *Id.* at 666.

apply to the drug addict. While a drug addict may feel compelled to commit a criminal act to support his habit, he may still have the requisite criminal intent. The most important distinction to be made is that insanity serves as a *defense* to any criminal act,[92] whereas addiction, although a status which cannot be made synonymous with a criminal act,[93] cannot be relied upon as a defense to other criminal acts. The insanity defense is similar to the treatment of chronic alcoholism as a defense to public intoxication in *Driver v. Hinnant.*[94] In both cases, the status served as a defense to an otherwise unlawful act which arose from the status.

It is difficult to compare the condition of insanity with vagrancy because the latter is not a disease or illness. Nevertheless, if it is considered that the *Robinson* Court relied on the analogous insanity defense theory to support its holding, it can be argued that the vagrant has no more criminal intent than does the drug addict. Therefore, the vagrant should not be treated as a criminal for his mere status.

D. Homosexuality

The homosexual or sexual psychopath is not punished for his status under the present law because only homosexual "acts" are considered criminal. No state makes homosexuality a crime, but nearly all prohibit an interrelated series of homosexual acts, usually under the name of sodomy or crimes against nature.[95] Many of these laws punish not only homosexual acts but also taboo heterosexual ones and sexual contacts with animals.[96] It is significant to note that the important element in punishing the homosexual is the "act," and even this approach has been criticized by several authorities.[97] Although there appears to be no direct relationship between vagrancy and homosexuality, there are some similarities. Both are personal statuses or conditions which are likely to result in some unlawful conduct.

The approach which the law takes with regard to homosexuals

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92 State v. Willis, 255 N.C. 473, 478, 121 S.E.2d 854, 857 (1961).

93 Robinson v. California, 370 U.S. 660 (1962).

94 356 F.2d 761 (4th Cir. 1966).

95 For a thorough discussion of the laws which deal with the homosexual offender, see Bowman & Engle, *Psychiatric Evaluation of the Laws of Homosexuality*, 29 TEMP. L.Q. 273 (1956); Glueck, *An Evaluation of the Homosexual Offender*, 41 MINN. L. REV. 187 (1956).

96 *E.g.*, OHIO REV. CODE § 2905.44.

97 For a partial listing, see note 95 *supra.*

might well be applied to the vagrants — only unlawful acts or conduct on the part of the vagrant should be punished. In effect, the classification "vagrant" would no longer exist; such individuals would be treated as ordinary citizens who could be arrested at any time that they commit an unlawful act. The vagrant is no more likely to commit an unlawful act than the homosexual, yet the former is treated as a criminal for his mere status while the latter remains free until an unlawful act is committed. On the other hand, it can be argued that the homosexual should receive such treatment because he is a "sick" person and the vagrant is not.

IV. An Evaluation of the Vagrancy Concept

Many writers have questioned the effectiveness of vagrancy prosecutions to implement crime prevention.[98] There are practical difficulties and abuses in enforcing vagrancy laws, and, in addition, they have been attacked on several constitutional grounds,[99] including the inquiry here that they violate the eighth amendment's cruel and unusual punishment clause. An examination of the existing abuses committed by law enforcement officials should illustrate the need for abolishing the concept of status in the crime of vagrancy.

A. Abuses of Vagrancy Laws

Although the desired effect of vagrancy statutes no longer is to compel the idle to work or to reduce the cost of relief for the poor, the statutes are very definitely designed to prevent crime.[100] It is interesting to note that vagrancy statutes are used to harass reputed criminals and drive them out of town or to punish an individual for committing some other crime.[101] Since conduct which constitutes vagrancy might also be made criminal by other statutes, law enforcement officials frequently have the choice between prosecuting for a specific offense arising out of certain conduct or prosecuting for vagrancy and using the conduct as evidence of the status.

98 See Douglas, *Vagrancy and Arrest on Suspicion*, 70 YALE L.J. 1 (1960); Foote, *Vagrancy-Type Law and Its Administration*, 104 U. PA. L. REV. 603 (1956); Lacey, *Vagrancy and Other Crimes of Personal Condition*, 66 HARV. L. REV. 1203 (1953); Sherry, *Vagrants, Rogues and Vagabonds — Old Concepts in Need of Revision*, 48 CALIF. L. REV. 557 (1960).

99 Vagrancy laws have been attacked as being unconstitutional on grounds of vagueness, restraint on freedom of movement, violation of the equal protection clause, and double jeopardy. See notes 28-35 *supra* and accompanying text.

100 This function is set forth in note 6 *supra* and accompanying text.

101 See Hall, *The Law of Arrest in Relation to Contemporary Social Problems*, 3 U. CHI. L. REV. 345, 369 (1936).

Because it is much easier to obtain convictions for vagrancy, in some jurisdictions vagrancy prosecutions practically replace prosecutions for prostitution and related sex offenses.[102] It is a common practice in some cities for the police to make regular roundups of prostitutes, charging them with vagrancy, imposing modest fines, and then discharging them.[103] In other cases, vagrancy may be used as a catch-all to convict people for some other crime that cannot be proved or for conduct that is undesirable but not criminal.[104]

An important use of vagrancy statutes lies in the possibility which they afford for arrest on suspicion. *The FBI Uniform Crime Reports* demonstrate that arrests on the basis of suspicion are common in this country.[105] When law enforcement officials suspect a person of some crime but lack enough evidence to justify an arrest, a vagrancy charge is an excuse for making the otherwise unlawful arrest.[106] This gives the police an opportunity to investigate the other crime further or to obtain a confession from the person held as a suspect. Vagrancy statutes often countenance this practice by providing that a suspicious person who cannot give a reasonable account of himself may be deemed a vagrant.[107] Interestingly, there is one rare case in which a "suspicious person" law was found unconstitutional as violative of the eighth amendment's cruel and unusual punishment clause.[108] However, this view was apparently not followed in subsequent decisions.

The persons most often arrested or questioned on suspicion include migratory workers, the poverty-stricken, and those who have a shabby appearance because crime rates are generally higher

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102 See WATERMAN, PROSTITUTION AND ITS REPRESSION IN NEW YORK CITY 55 (1932).

103 Douglas, *supra* note 98, at 8.

104 See, *e.g.*, Edelman v. California, 344 U.S. 357, 365-66 (1953) (dissenting opinion); People v. Craig, 152 Cal. 42, 47, 91 Pac. 997, 1000 (1907).

105 1965 FBI UNIFORM CRIME REPORTS 110-11.

106 See Note, *Use of Vagrancy-Type Laws for Arrest and Detention of Suspicious Persons*, 59 YALE L.J. 1351 (1950).

107 *E.g.*, OHIO REV. CODE § 715.55(B).

108 Stoutenburgh v. Frazier, 16 App. D.C. 229 (D.C. Cir. 1900), in which a statute making it a crime to be a suspicious person was held to be wholly inoperative on the grounds that it was excessively vague and inflicted cruel and unusual punishment. The court stated:

> The suspicion of which he [the defendant] is the object is wholly undefined, and in no manner connected with any criminal act or conduct either of the past or that might occur in the future. . . . Mere suspicion is no evidence of crime of any particular kind, and it forms no element in the constitution of crime. *Id.* at 234.

among these groups,[109] but it seems questionable that a person's appearance should be held against him by permitting such discriminatory enforcement of crime-preventive measures. Laws on the subject of vagrancy are so broad and so vague that a policeman has almost unlimited discretion in their enforcement.[110] It is significant that these abuses may extend to police questioning and harassment of law abiding citizens.

Recently, a Yale University law professor became so disturbed about the common and abusive practice of police in questioning and detaining innocent people that he authored a public protest.[111] The professor noted in his article that while taking walks late at night, he is frequently stopped and questioned by the police who are ready to arrest him for vagrancy upon his failure to produce any identification. While such a practice by police may not raise eighth amendment questions,[112] it illustrates the extent to which vagrancy laws may potentially be abused by law enforcement officials if they choose to harass an individual who has not broken any law. The crime-preventive nature of vagrancy laws affords police wide discretion to question persons when there is neither a visible sign of an offense nor evidence to direct their attention to the particular individual. It is of small comfort to the humiliated, law-abiding citizen who is arrested for vagrancy or questioned for suspicion that he will eventually be found innocent.

B. *Vagrancy Laws and Crime Prevention — A Workable Solution*

The effectiveness of the present concept of the crime of vagrancy in carrying out its basic purpose of crime prevention can be seriously questioned. An examination of the common abuses by police officials in enforcing vagrancy laws indicates that they do not actually perform such a purpose because it is not clear that those persons subject to arrest on vagrancy charges are necessarily potential criminals. In effect, suspicion causation has been substituted for actual causation by the creation of a criminal status for vagrancy, a transfer which is a departure from traditional criminal

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109 Douglas, *supra* note 98, at 5. See also Reich, *Police Questioning of Law Abiding Citizens*, 75 YALE L.J. 1161, 1164 (1966).

110 See Note, *supra* note 106.

111 Reich, *Police Questioning of Law Abiding Citizens*, 75 YALE L.J. 1161 (1966).

112 Such practices are more likely to raise questions concerning the fourth and fifth amendments and also the individual's constitutional right of privacy. Douglas, *supra* note 98, at 13; Reich, *supra* note 111, at 1169.

theory.[113] Professor Foote in an extensive study in Philadelphia discovered that vagrants follow several noncriminal paths; he concluded that attributing future criminality to vagrants is unfounded in fact.[114] The professor observed:

> Nor does it necessarily follow that one who is idle and apparently without means of support will turn to criminality. When completely down and out, he may be able to go on relief or to obtain help from friends or relatives. Many casual workers obtain jobs between periods of unemployment — which last as long as any funds remain — after which they may ship out to sea, go back to migratory agricultural labor or seasonable industrial work or even get a job right in the skid row. A man willing to undergo the very low standard of living of the stereotype vagrant may, like Thoreau in *Walden*, work at odd jobs only to the extent necessary to provide for his limited needs.[115]

In the final analysis, any changes of existing vagrancy laws must be made with a consideration of both the interest of society and the rights of the individual. Society has an interest in being protected from the possible commission of crimes, yet the individual's freedom must be balanced against this interest. It is submitted that repealing current vagrancy laws which punish status and enacting new laws to punish instead specific acts when they occur serves the interests of both society and the individual. Under this approach, only those vagrants who actually engage in criminal conduct could be arrested and punished. The term "vagrant" would no longer exist because a person's status would have no significance in determining whether or not he has engaged in criminal conduct. Adherence to this traditional criminal theory serves to protect society's interest in crime protection and, at the same time, recognizes the individual's liberty through a strict reliance solely upon criminal conduct. By defining specific acts as criminal, not only would the individual be forewarned but also the frequent abuses of arrest on suspicion or arbitrary selection would be replaced by arrests for the actual commission of a certain act.

Repealing existing vagrancy laws and enacting new statutes to punish certain acts rather than a present status has already proved to be an effective method of dealing with the problem of vagrancy.

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[113] "A man who is idle and has no visible means of support is placed in a criminal category, because he is deemed likely to commit a crime in order to gain a livelihood .... [W]hen the law proceeds on that basis, suspicion is the foundation of the conviction ...." Douglas, *supra* note 98, at 11. For a thorough treatment of the concept, see Note, 37 N.Y.U.L. REV. 102, 116-19 (1962).

[114] Foote, *supra* note 98, at 625-27.

[115] *Id.* at 626-27.

England abolished the status concept of vagrancy long ago.[116] The recently enacted Illinois Criminal Code embodies this idea by completely eliminating the vagrancy concept and imposing sanctions only when there is clear proof of the commission of a specific criminal act.[117] The Model Penal Code[118] and a recent California statute[119] have also made significant reforms, although not to the extent of the Illinois law.

It has been demonstrated that the crime-preventive purpose of vagrancy laws can be achieved through the traditional criminal theory of punishing conduct. The other purposes of vagrancy laws — to force the idle to work and to reduce relief for the poor — have become economic problems. "The economic purposes which once gave vagrancy a function no longer exist, and the philosophy and practices of welfare agencies have so changed relief methods that a criminal sanction to enforce an Elizabethan poor law concept is outdated."[120] The notion that vagrants should be punished to force idle wanderers to work should be discarded in place of modern welfare and rehabilitation measures. Unfortunately, according to some authorities, vagrancy concepts linger on even in the modern welfare system.[121] Failure to provide relief for vagrants is most apparent in the residency requirements which characterize public assistance laws.[122]

V. CONCLUSION

It is time that state legislatures recognize the inadequacies of vagrancy laws as crime-preventive measures. The imposition of any penal sanctions requires that society's interest in being protected from the commission of criminal acts be balanced against the freedom of the individual. Since the purpose of vagrancy laws in preventing future crimes has no utility, society's interest is just as well

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116 The Vagrancy Act of 1824 marked the beginning of criminal punishment of the conduct of vagrancy in England. 5 Geo. 4, c. 83. See Ledwith v. Roberts, [1937] 1 K.B. 232 (C.A.).

117 ILL. ANN. STAT. ch. 38, § 35-1 (Smith-Hurd 1961), repealing ILL. REV. STAT. ch. 38, §§ 11-14, -17, -19, 28-1, 270 (1957).

118 MODEL PENAL CODE § 250.2 (Proposed Official Draft 1962).

119 CAL. PEN. CODE § 647 (Supp. 1966).

120 Foote, *supra* note 98, at 649-50.

121 For a complete discussion of the effect of vagrancy laws on our welfare system, see, *e.g.*, Rosenheim, *Vagrancy Concepts in Welfare Law*, 54 CALIF. L. REV. 511 (1966).

122 Mandelker, *The Settlement Requirement in General Assistance* (pts. 1-2), 1955 WASH. U.L.Q. 355, 1956 WASH. U.L.Q. 21. See also Rosenheim, *supra* note 121, at 523.

protected without vagrancy laws. As for the individual, vagrancy laws infringe upon several of his constitutional rights. If the legislatures fail to eliminate the general vagrancy criminal concept by enacting legislation which punishes only specific criminal acts, it is hoped that the courts will soon find the punishment of vagrancy unconstitutional. Because vagrancy laws frequently punish an individual for his mere status without proof that he has committed any criminal act, there is some basis for finding, under an extension of the *Robinson v. California*[123] rationale, that they violate the eighth amendment's proscription against cruel and unusual punishment.

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[123] 370 U.S. 660 (1962).