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## DEVELOPMENT OF THE SYSTEMS OF CONTROL OF CONVICT LABOR IN THE UNITED STATES.

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Prominent among the many phases of social legislation during the last decade is that relating to the control of the labor of convicts sentenced to punishment by imprisonment and compulsory labor. This recent legislation prescribing the manner of imposing compulsory penal labor is invariably granting to the state increased supervision and control over the labor of convicts and over the products of prison industry. This assumption of control by the state has grown steadily in prominence since the decade of the eighties; and within the last few years all the states, as well as the Federal Government, are not only extending their supervision and control over the employment of convicts, but are also generally taking over the operation of such labor directly for the benefit of the state and for the welfare of the prisoners. Although the legislation setting the precedence for these recent tendencies in the control of convict labor can be fixed pretty definitely in the decade of the eighties of the last century, efforts to secure such control of penal labor appear at a much earlier date. Isolated agitation and demands for such legislation are observed as early as the second quarter of the century, and soon after the Civil War this propaganda for a system of convict labor which should not compete unfairly with free labor and which should recognize certain penological requirements and principles, developed strength so rapidly that it resulted, before the close of the century, in working out and applying, by legislation, the present system of control of convict labor.

The system of control adopted in this present tendency toward the exclusion of convict labor from the wage and price market, and toward the application of this labor to public use under state supervision, is a modification of, and an outgrowth from, other preceding methods of control and application of such labor. These preceding methods of control are distinctly discerned in successive periods throughout the history of the United States, and form a valuable background for a study of the present methods of controlling compulsory labor, and for an appreciation of the great advance made in the protection extended by the state to the offender in society. An inquiry into these methods of control which have been used at different times in the history of the United States shows that they have passed through four well de-

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finer stages of development. Each of these stages falls into a more or less clearly defined period. These are: 1, the period of personal and local control, prior to the nineteenth century; 2, the period of public control and public account, coinciding approximately with the first quarter of the last century; 3, the period of private control and private account, covering approximately the last three-quarters of the century; and 4, the period of public control and public use, coinciding with the last two decades. In these successive periods, characteristic methods of employing convicts predominated; in the first, the indenture and personal account systems; in the second, the public account system; in the third, the contract, lease and piece-price systems; and in the fourth, the public or state use system. This historic sequence of the methods of applying and controlling convict labor results from the response of these methods to the industrial conditions and social philosophies of the different periods.

The manner of securing the raw material for the employment of prisoners, of supervising their labor and of disposing of the finished product, is known as a system of convict labor. It is in the variation of these three elements of a system of convict labor that the characteristics of the different periods of the methods of control of penal labor inhere. The tracing of these elements through the successive stages of the development of the methods of control of convict labor in the United States together with a brief discussion of some of the forces which have operated in this development constitutes the task undertaken in this study.

I.—During the eighteenth century the imposition of labor as a punishment for crime is characterized by personal and local control of such servitude. The peculiarity of this control in this early period of our industrial and social development is seen: 1, in the operation of the indenture; and 2, in the methods of supplying labor for the persons imprisoned in the houses of correction. In the operation of the indenture the relationship between the employer or lessee and the convict so bound out is direct.<sup>1½</sup> Likewise a directness of responsibility for providing employment for persons confined in the houses of correction is imposed by law upon persons legally responsible for wards so confined. When neither of these two methods is feasible, the community assumes the responsibility for the employment of persons punished by imprisonment with labor.

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<sup>1½</sup>Under the indenture a person is bound out by contract or by agreement to serve a lessee for a specified term for an agreed sum. The entire responsibility for the keeping, the employment and the care of the person so bound out is entrusted to the employer.

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The crime of theft was the first to be punished by compulsory labor under the indenture. Persons convicted of theft were enjoined to make three or fourfold restitution of the value of the goods stolen, and were further punished by fines or whipping.<sup>2</sup> But if the offender lacked means of making this restitution, the prosecutor might sell the service of the convicted person to any of the "king's subjects" under the terms specified by the court. This mode of imposing penal labor continued throughout the colonial period of Massachusetts and Maryland, and was re-enacted in Massachusetts under the new state laws of that commonwealth.<sup>3</sup> Legislation in that state, near the close of the eighteenth century, prescribed that the term of the indenture might not exceed the term of the sentence set by the court, and that if the service of the offender was not disposed of in thirty days the convict might be sentenced to imprisonment with "hard labor"; or the warden might bind out the service of the prisoner by indenture to make satisfaction for fines and cost of imprisonment only, the offender being exempted from the obligation of making restitution.<sup>4</sup> Similar laws enjoining offenders "to make satisfaction in service to any citizen of the United States for charges of imprisonment and fines," were enacted in New Hampshire and Connecticut.<sup>5</sup>

The indenture is a simple and direct method of imposing and controlling compulsory penal labor, and it was used, in addition to its punitive purpose, to make restitution and recover cost of imprisonment and fines imposed on misdemeanants. But because of its personal relationship between the employer and the sentenced person, it was capable of much abuse as well as of much good; for the treatment of the prisoner rested with the individual employer without any public inspection or control. The use of the indenture gradually decreased as economic conditions made it inapplicable or as public sentiment turned against it, and it was superceded by labor imposed with imprisonment in the houses of correction or work houses.<sup>6</sup>

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<sup>2</sup>Laws of Mass. Bay Colony, 1695; Laws of Maryland, Ch. 15, 1715. In Massachusetts (cf. laws 1695) branding was inflicted for the second offense of theft, and death for the third.

<sup>3</sup>Laws of Mass. March 15, 1785.

<sup>4</sup>Laws of Mass. June 18, 1799 and March 16, 1805.

<sup>5</sup>Laws of N. H. Feb. 10, 1791, and Laws of Conn. 1796, Sec. 13. "An act \* \* \* correcting \* \* \* rogues."

<sup>6</sup>The imposition of penal labor by means of the indenture was in harmony with the method of dealing with indentured servants in our colonial times. The importance of this method of employing convicts may be inferred from the frequent statutes relating to it and from the further fact that before slavery became extensive in the colonies, the demand for indentured servants was so great that it led to a well organized system of kidnaping and deportation to the American Colonies (cf. Ency. Britannica, article, Prison Discipline, and Doc. Hist. of Am. Ind. Soc., Vol I, p. 339).

The control of the labor of misdemeanants sentenced to these houses of correction was either personal or local. It was personal because relatives and "masters" were responsible for the employment of wards so confined.<sup>7</sup> It was local because the community or the county, and not the state, provided employment for those who could not be furnished with material and tools by relatives or masters. Persons imprisoned in the houses of correction were set to work unless they were physically unable to perform manual labor; and if unruly they were to be further punished by whipping and abridgment of food, "or in a manner suited to the case." When the offender was a stranger in the county, and was not legally responsible to anyone in the community, employment was furnished him through the office of the keeper or overseer of the house of correction. The fines and cost of keeping were charged against the prisoners and "they were allowed for their labor and work the sum of 8 pence out of every shilling" they earned. If such persons were masters or heads of families, the whole profit and benefit of their labor, or so much thereof as the court should think necessary and direct "was applied for the relief and support of such persons and their families." Parents and masters paid to the keeper any deficits incurred because of the inability of imprisoned persons to engage in any occupation, and a part of the earnings reverted to the family of the imprisoned person. The earnings of strangers in the community who were convicted of misdemeanor and imprisoned in the houses of correction, were paid into the public treasury. Any deficit incurred because of their inability to work was restored to the warden by a general assessment made by the selectmen. In estimating profit and deficit, the keeper's salary was counted into the cost. He received as salary a specified portion of the earnings of those employed, and a pro rata share of those unemployed was borne respectively by the relatives or masters and by the community.

The imposition of penal labor by the use of the indenture and by labor imposed in the houses of correction existed concurrently throughout the greater part of the eighteenth century.<sup>8</sup> But labor-imposed

<sup>7</sup>Laws Mass. Oct. 22, 1700.

The terms master and servant were applied to the parties entering into an agreement either under a formal legal document or merely under the sanctity of custom to employ and serve for remuneration or in lieu of training under the apprenticeship, for a prescribed term of years. It is in this sense that the terms master and servant were used in these early laws. [cf. Bruce, Econ. Hist. of Va., Vol. I, p. 573.]

<sup>8</sup>The indenture was authorized by a law of 1695 (cf. Mass. Bay Colony, law 1695) and imprisonment with labor in 1700 (*ibid.*, Oct. 22, 1700). In 1805 (*ibid.*, Mar. 16, 1805) the law still recognized the use of the indenture, but provided that if the prosecutor failed to employ or to bind out the convicted person, the offender might be sentenced to labor in prison, and indemnity made "from the

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in prison came to be more extensively used than the indenture because the former was imposed for a variety of offenses, while the latter was used only for making indemnity and for recovering fines and cost of imprisonment of persons convicted of theft; and imprisonment with labor was also, in time, substituted for this purpose.<sup>9</sup> Imprisonment with labor increased in prominence also because this form of punishment was substituted for corporal and, to some extent, for capital punishment.<sup>10</sup> Penal labor imposed in prison became the prevailing form of control of such involuntary servitude, and has continued so down to the present time; while the indenture, which was applicable to the social and industrial condition of our colonial times only, disappeared near the close of the eighteenth century. Compulsory labor ceased to be controlled either by personal or by local authority, and came to be directed and supervised by county and state authority.

II.—The characteristics of the employment of convict labor in the first stage of the development of the methods of control of such labor are those of direct relationship between the employer and the convict in the operation of the indenture, the responsibility of relatives and masters in providing employment for wards and servants imprisoned in the houses of correction, and the sharing by the prisoners in the fruits of their own labor. These characteristics were modified near the close of the eighteenth century by several circumstances. These were:

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earnings as they [should] accrue and as far as they [might] extend." The laws of Connecticut made similar provisions for supplementing the indenture and for recovering fines and cost of imprisonment by the use of hard labor in prison. (cf. Sects. 13-18, Laws of Conn. 1796—"An act constituting Newgate prison.")

<sup>9</sup>Laws Mass. Oct. 22, 1700; June 18, 1799; Mar. 16, 1805; also laws of N. H., Feb. 10, 1791.

<sup>10</sup>The substitution of penal labor for other forms of punishment among the various states may be illustrated by the legislation of New York. In 1788 the death penalty was attached in that state to the crimes of treason, murder, forgery, counterfeiting, rape, forcible detention of women, robbing a church, house-breaking by day or night if the house were occupied, robbery, wilful burning of any house or barn, and malicious maiming. Justices of the session were also authorized to punish vagrants and disorderly persons by whipping and six months' imprisonment; but in 1789 it was permitted that labor be substituted for whipping at the discretion of the courts. By an act of 1801 the death penalty was confined to treason and murder, and whipping was dropped from the punishment of larceny. In 1789 the city of New York had set a precedent for the employment of convicts in that state by putting vagrants to work "in cleaning out the drains beneath the exchange and the fly market, the community having petitioned in 1788 for the enactment of a law providing for hard labor both within and without doors." (cf. T. B. F. Smith, N. Y. in 1789, pp. 13, 14.)

As the prison reform movement extended among the states compulsory labor was invariably provided for in the new statutes. In 1829 ten states had adopted such reform of their penal codes. (cf. Boston Prison Discipline Society, Ann. Rept. 1829, p. 31 ff. and de Beaumont and de Tocqueville, Penitentiary Systems in U. S., p. 12.)

1, the repeal of the law which had required that parents and masters furnish the means of employment for wards and servants imprisoned in the houses of correction,<sup>11</sup> and 2, the concentration of large numbers of convicts by confining them in the newly erected state prisons and large county prisons or penitentiaries. Resulting from these circumstances a new form of control of compulsory labor developed; namely, that of public or state control and public or state account. The control of penal labor in the houses of correction and in the gaols is placed "wholly under the government of the overseer" or keeper, and likewise in the state prisons and penitentiaries the labor of convicts is placed under the control of the state officers, the wardens and inspectors of the state prisons.<sup>12</sup>

The most prominent method of employing penal labor in the period of state control and state account is by imprisonment with labor in state prisons and penitentiaries, and not as in the period of personal and local control, by the use of the indenture and by labor imposed in the county houses of correction.<sup>13</sup> The control by the state is vested in the prison officers, who are empowered to prescribe how and by whom the employment shall be furnished; and they are responsible, likewise, for the disposition of the products of prison industry. The executive officer, who is designated as warden or state agent, becomes an entrepreneur on behalf of the state. There is still a general expectation that the labor of prisoners will net a profit over all prison expenses, but only deficits result; and in consequence the theory and the practice of keeping an account for the labor and earnings of each convict falls into disuse. The deficits are assumed by the state, and prison industry comes to be conducted entirely by, and on account of, the state.<sup>14</sup>

<sup>11</sup>Laws of Mass. June 25, 1802. By this law no parent or master might furnish employment without the consent of the overseer of the prison. Likewise in New Jersey the county, through the office of the warden, provided the raw material and tools for the employment of prisoners. (cf. Laws of N. J., February 20, 1799.)

<sup>12</sup>Laws, Mass., February 27, 1798.

<sup>13</sup>During the years 1790 to 1812 five state prisons were established; Conn. (1790, cf. Am. Ec. Assn. Pub., Sec. 3, Vol. 8, No. 3, p. 220); Pa. (1700, cf. Pa. Jol. of Pris. Disc., Vol. 1, p. 4); N. Y. (1797, cf. Laws of N. Y., Mar. 26, 1795); N. J. (1798, cf. Laws of N. J., Feb. 15, 1798); Mass. (1805, cf. laws of Mass., Je. 15, 1805); N. H. (1812, cf. Laws of N. H., Je. 19, 1812). The laws creating the prisons prescribed the manner of conducting the prison labor and industry.

<sup>14</sup>Dr. E. Stagg Whitin, Genl. Secy., Nat'l Com. on Prison Labor, says (cf. Penal Servitude, p. 6) that "the earliest prisons in the United States were privately owned. The state paid a small sum for the keep and guarding of the prisoners, whom the private individuals worked at their own discretion, deriving from the work what profits they might. We next see the head of the penal institutions appointed by the state, but paid by individual manufacturers for whose profit he worked his prisoners." This statement of Dr. Whitin is un-

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Not only was the labor of the prisoners conducted by the prison officers, but by them also were the prison-made goods entered upon the market. The warden's duties relating to the management of the labor of convicts were prescribed in detail by statutes, but no directions were given in the laws for the disposition of the goods made in the prisons.<sup>15</sup> These goods were sold from stores and warehouses, openly advertised as prison-made or surreptitiously sold, feigning that they were made by free labor.<sup>16</sup> Convicts were also employed in quarrying and in preparing building material for the market. But the limited demand for prison wares forced upon the warden increased burdens as an entrepreneur in trying to keep the felons employed at profitable occupations.

In order to understand fully the forces which shaped the methods of control of convict labor in the first half of the last century it is necessary to review briefly the question of the two methods of imprisonment known respectively as the separate or solitary system, and the aggregate or silent system. The separate system of imprisonment was advocated by reformers and penologists in Pennsylvania, while the aggregate system was advocated by penologists in New York. The controversy over these two systems was viewed with deep interest by all the states and by Europe as well, and was of far-reaching effect in shaping the methods of imprisonment and employment of felons in the early decades of the century. A plan of separate or solitary confinement with absolute unemployment was widely advocated in Pennsylvania, but the system finally adopted in that state prescribed work with cellular imprisonment, save for the more atrocious criminals, who were confined in idle solitude. The evils of aggregate housing and promiscuous mingling of prisoners, which the advocates of the separate system condemned, were overcome in the New York plan by separate confinement by night and aggregate employment in common workshops by day. The New York plan was a great advance in penal principles, and was everywhere copied, save in Pennsylvania, as prison reform advanced.<sup>17</sup>

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reliable, as the present inquiry of the early state prisons shows. Dr. Whitin's source is Eave's *Cal. Lab. Leg.*, which refers only to Cal. and not at all to the penal history of other states.

<sup>15</sup>A few general phrases are, however, found in the statutes, for example, the laws of Mass. (cf. *Laws*, Mar. 13, 1805) prescribed that the state through the office of the warden, "shall vend and dispose of all articles \* \* \* manufactured" by the prisoners.

<sup>16</sup>G. Powers, *An Account of Auburn Prison*, p. 25; *Hist. Am. Ind. Soc.*, Vol. V, pp. 53 and 231. *Sen. Doc.*, No. 174, 25th Cong., 3d Sess., Vol. III, (Feb. 21, 1839).

<sup>17</sup>*Penn. Jol. of Prison, Disc. Soc.*, Vol. I, p. 4, ff.; Vol. 4, p. 112, ff.; Vol. 17, p. 4, ff.; *Boston Pris. Disc. Soc.*, Rept. 1827, pp. 73 and 112; 1828, p. 21; *Rept. Comm. of Lab.*, 1886, p. 505; de Beaumont and de Tocqueville *Pris. Sys.* in U. S., p. 3, ff.



The aggregate or Auburn system, besides being advocated for penological reasons, recommended itself because it was suited to the new and changing industrial conditions of the time. As the division of labor in the trades and crafts advanced along with the progress of our industrial revolution, team work in prison industry, as well as in free industry, became more productive than isolated employment, and the aggregate system became necessary for the most successful operation of prison industry. The Boston Prison Discipline Society threw its strength on the side of the aggregate plan of employment because thereby work was more certainly guaranteed than under the plan of cellular confinement and employment.<sup>18</sup> The society was, no doubt, prompted by a humanitarian motive and insisted on employment because of its reformatory influence upon the prisoner.<sup>19</sup> The aggregate plan, because it afforded the greater advantages in securing steady employment and in controlling the labor of prisoners, became the universal plan of employment and imprisonment save in Pennsylvania. But because of the greater number of occupations which this plan admitted into prison enterprise and because of the greater adaptability to industrial conditions which it made possible, the entrepreneur functions of the warden were greatly increased, and after his divided duties resulted in inefficient employment of the felons and in lack of prison discipline, the operation of prison industry was turned over to private manufacturers. Pennsylvania alone adhered to the separate method of employment and imprisonment, and with a slight use of the piece-price plan adhered to the state account system, while all the other states adopted the aggregate method and turned to the contract in search of a more effective method of employing the labor of felons.<sup>20</sup>

In addition to developing the aggregate system, the industrial condition of the country, in several other ways, exerted a large influence in the development of the methods of controlling compulsory labor. 1. The meager transportation facilities and the inadequate demands of the market for prison-made goods, resulted in a lack of suitable employment as soon as criminals were grouped to any considerable extent in the large prisons.<sup>21</sup> This lack of employment resulted, in all the states, in a large annual deficit until the decade of the twenties, at which time the contract system was introduced into

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<sup>18</sup>This society was a voluntary philanthropic organization founded in Boston in 1825.

<sup>19</sup>Boston Pris. Disc. Soc. Rept. 1828, p. 21.

<sup>20</sup>Penn. Jol. of Pris. Disc., Vol. 4, p. 112; Rept. of Com. of Lab., 1886, p. 207.

<sup>21</sup>Rept. of Board of Visitors of Mass. State Pris., appendix pp. 18-19 (1805). Haynes Hist. of Mass. State Pris., pp. 4-13. Rept. Com. of Lab. 1886, p. 504.

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prison industry.<sup>22</sup> In urging employment for prisoners, "productive work" was always insisted upon, meaning employment from which a pecuniary return might be realized. No thought was given to the employment of convicts on public works and for state use. Consequently the presence or absence of work hinged on the question as to whether or not the wares would find a demand on the market. 2. The profitability of prison industry was further affected by the introduction of machine methods into free industry which forced down the market price and in consequence made prison industry, which lacked the best methods of production, liable to greater losses.<sup>23</sup> 3. The desire to keep the prisoner profitably employed led to the introduction of a great variety of occupations, but prisons were everywhere conducted at a loss; and the exaggerated importance attached to pecuniary returns led to the selling of prison labor to private entrepreneurs and to the relinquishing of the control of this labor to the employer.

Prior to the close of the eighteenth century the control of compulsory penal labor was vested in personal and local authority, but during the first quarter of the nineteenth century this control is assumed by the counties and states. This control is exercised through responsible public officers; and prison labor, in this second stage of the development of the methods of such control, is conducted by these public agents who provide the means of employment and market the prison-made wares. The legal regulations prescribe that both the prisoner and the state shall share in the net earnings of the convict's labor, as had been the practice in the period of personal and local control. But only deficits occur, and an account of credit and debit is kept not with the prisoner but with the state only, and prison industry comes to be conducted by and on account of the state. The expected earnings of prison labor is interfered with by both internal and external forces in the administration of penal institutions. The internal force is the increase in the number of prisoners grouped in one locality and the consequent over-supply of prison-made wares in the personal and local market. The external forces are: 1, the low demands of the market which is a contributory cause in the stagnation of prison industry; 2, the competition from the superior free industry which

<sup>22</sup>David Dyer Hist. of Albany Penit., p. 450 ff. Boston Pris. Disc. Soc. Rept. 1826, p. 43, *ibid* 1828, pp. 15-17.

<sup>23</sup>Soon after the erection of the Auburn prison, the commissioners recommended that prison industry "should be a business that can not be conducted by machinery so as to reduce the wages too low." [G. Powers, An Account of N. Y. Pris. at Auburn, p. 72 (1826.)]. The Boston Pris. Disc. Soc. reported in 1826 that "weaving was remunerative because it could not be performed by steam or water power, and it therefore payed well for manual labor." (cf. Boston Pris. Disc. Soc. Rept. 1826, p. 16.)

forces down prices and shuts out occupations from use in the prisons; and 3, the development of the factory method of production which makes the handicraft method of employment in prisons impracticable and unprofitable and demands aggregate team work in prison industry. This aggregate method of employment not only makes impossible an accurate personal account with each prisoner, but also necessitates specialization in the operation of the various manufactories introduced into prison industry.

These economic conditions which result in the stagnation of prison industry and in the low remunerativeness of penal labor, and which augment the penological and industrial duties of the warden are the forces which lead to the adoption of a third method of supervising the labor of convicts; namely, that of private control and private account.

III.—The bringing together of large numbers of convicts in large prisons in the latter part of the eighteenth, and the early part of the nineteenth century gave rise to new moral problems in the care and housing of convicts as well as to economic burdens in their employment. The application of the labor of these felons was unsuccessful in meeting the demands either of those citizens who were concerned about the prison finances, or of those who were interested primarily in the moral welfare of the convicts. To find a remedy for this lack of employment and discipline, the contract, lease and piece-price systems were instituted in prison industry during the decades of the twenties and thirties and continued as the prevailing methods of employing compulsory labor till the close of the century.

In these systems the control over the convicts by the employer varies from more or less restriction as to the working hours and tasks, to complete jurisdiction over the care, housing, discipline and employment of the prisoners. In delegating to private entrepreneurs the control of the labor of convicts the state in every case relinquishes a part, and in some cases all, of the moral and disciplinary supervision over the persons sentenced to compulsory labor. In the contract system the care and discipline of the prisoners is reserved to the warden as his special duty, while in the lease system this function is delegated to the employer. In the piece-price system the power of the employer or contractor extends only to the purchase of the raw material and to the selling of the finished goods, while the direction of the labor and the discipline of the prisoners is posited with the warden and his responsible foremen. A system of profit sharing between the state and the lessee also had a limited existence, being used only in the state prison of Kentucky, from 1825 to 1860. In this plan of control the employer has similar authority as in the lease sys-

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tem. Of these methods of private control, the contract was the earliest as well as the most extensively used. The lease system did not come into extensive use until after the Civil War, although it was used in the North before that time. The piece-price system did not gain prominence till the decade of the eighties when it was used as a substitute for the contract system and as an alternative to the public account system. Throughout the middle part of the century the contract was the principal plan of employment, and therefore the discussion of the period of private control has to do largely with this system of imposing compulsory labor.

The contract system was introduced in the State Prison of Massachusetts in 1807, and continued with a slight interruption in 1828 till 1887.<sup>24</sup> It was introduced in New York in 1824,<sup>25</sup> in Kentucky in 1825, in Connecticut in 1828,<sup>26</sup> and in Ohio in 1835.<sup>27</sup> In most prisons the system was introduced gradually, the various departments of industry being hired out as the burden of securing employment under the state account became burdensome, or as the contract system offered greater remuneration. The extent to which the contract system was introduced into a prison depended (on the side of the prison administration) on the obstacles interfering with the favorable operation of the state account systems, and on the relative remunerativeness of the two systems; and (on the side of the employer) on the prospect of profitable employment of the convict labor. In times of prosperity the wardens experienced little difficulty in hiring out the labor of convicts, but in times of depression contractors were slow to hire prison labor; and it was at such times also that the employment under the state account system was most difficult to procure.<sup>28</sup> The contract system was introduced only gradually, and was subjected to the changing industrial conditions and to public sentiment, but after being introduced into a prison, the system continued with but slight or temporary interruptions till the latter part of the century. A few attempts to abolish it in several prisons proved unsuccessful. One such attempt was made in Massachusetts in 1828. A law of that

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<sup>24</sup>Haynes, *Hist. of Mass. State Prison*, p. 7, ff. The first law in the U. S. relating to the contract system was enacted by the legislature of Massachusetts in 1798 (cf. *Laws Feb. 27, 1798*). This law directed that the wardens of the houses of correction should hire the labor of the prisoners to any one who was willing to furnish the material on which the prisoners might be employed, but there is no contemporary record found showing that the contract system was used till 1807.

<sup>25</sup>G. Powers' brief account of Auburn Pris., p. 25 ff.

<sup>26</sup>Pub. Am. Econ. Assn., Sec. 3, Vol. 8, No. 3, p. 224.

<sup>27</sup>N. P. A. Ann. Rept. 1886, p. 222.

<sup>28</sup>Rept. of Inspectors of N. Y. State Prisons 1859-1860.

year forbade the wardens to hire out the prisoners to contractors;<sup>29</sup> but the attempt to secure employment under the state account system was unsuccessful and idleness prevailed. The effort to meet the exigency gave rise to the first use of the piece-price system. The prisoners were, for a short time, employed in setting up kegs, the staves and headings being previously prepared.<sup>30</sup> The state received three cents a keg for this work. There is no evidence that this method of employment continued long; at any rate, the amount of work was found to be insufficient, and the contract was reintroduced as a lesser evil than unemployment. In New York in 1847 the term of contract was limited to five years.<sup>31</sup> There was considerable opposition to this restriction because it was thought that such a limitation would stand in the way of making the most favorable terms with the contractors, and would cause undue irregularity of employment and unnecessary effort in making contracts. The prison commissioners urged that it be made optional with the contractors to extend the term of the agreement for additional five years. In 1851 the public account system was tried in Ohio, but with unsatisfactory results, and the contract system was reintroduced.<sup>32</sup> The contract system clung tenaciously to prison industry until the demands of labor organizations and of reformers became extensive enough to induce legislation for the protection of the prisoner against the cupidity of the entrepreneur, and of free labor against the unfair competition with prison labor.

The employment of prisoners under the contract won public favor because of its profitableness to the state,<sup>33</sup> because of the small demand it made on the administration to conduct it,<sup>34</sup> and because it relieved the state from entering as an entrepreneur upon the competitive market.<sup>35</sup> The public account system was wanting, in the early part of the century, in all these points, and in consequence was generally

<sup>29</sup>Laws of Mass. Nov. 1, 1828.

<sup>30</sup>N. P. A. 1894, p. 65.

<sup>31</sup>Rept. Inspectors, N. Y. Prison, 1854-56, p. 20.

<sup>32</sup>N. P. A. Rept. 1884, p. 132.

<sup>33</sup>If the state agent is successful in contracting the labor of the convicts at a fair price and at regular employment, the financial success of the contract system is assured, and it is the most remunerative except the lease system; for it throws on the contractor all responsibility for buying, selling and collecting. It requires little state capital, and more than other systems, except the lease system, gives a steady, sure and definite income. The state is paid whether the convict works or not, and bidding for the contract will insure pay about equal to what the labor is worth. [Ec. Assn. Pub. Sec. 3, Vol. 8, No. 3, p. 244.]

<sup>34</sup>G. Powers, A Brief Acct. of N. Y. Prison, p. 25 ff.; Boston Pris. Disc. Soc. Rept. 1833, p. 76.

<sup>35</sup>Boston Pris. Disc. Soc. Rept. 1833, p. 76; N. P. A. 1886, p. 222; Haynes, Hist. of Mass. State Pris., p. 242.

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superceded by the private methods of supervising the labor of the convicts.<sup>36</sup> The contract system has been both defended and condemned on moral and humanitarian grounds. It has been opposed for various reasons: 1, it lacks discipline;<sup>37</sup> 2, it puts the emphasis on the earning power of the prisoner rather than on the reformatory and instructive value of his labor;<sup>38</sup> 3, it introduces the evil influence of irresponsible foremen and mechanics;<sup>39</sup> 4, contractors are prone to exact an undue amount of work from the prisoners and thereby inflict not only great injustice but also permanent physical injuries;<sup>40</sup> and 5, it does not discriminate in favor of the young and corrigible prisoners.<sup>41</sup> Although the merits of the contract system were warmly debated pro and con throughout its long history, it is not the most devoid of penological merits. The greatest moral abuses have been ascribed to the lease system—the second prominent method of private control of compulsory penal labor.

The first law in the United States authorizing the contract system also permitted a modified form of the lease system.<sup>42</sup> In this law of Massachusetts in 1798, the wardens of the houses of correction were permitted to hire the labor of prisoners to anyone who would furnish employment near enough to the prison that the officers might have a general supervision of the convicts and of the care and treatment received. In 1825 the convicts in the state prison of Kentucky were leased to an employer who was given complete control of the labor, discipline and care of the prisoners.<sup>43</sup> But instead of employing the convicts outside the prison, as is the case with the ordinary lease system, they were confined in a prison over which not a warden, but a lessee had control. This early type of the lease system is peculiar also in the fact that the state received not an annual or daily sum for the labor of the felons, but a percentage of the net earnings of their labor. The contractor for the prison labor, in lieu of an agreed percentage of the profits, assumed all responsibility for the management of the prison and its inmates. The final stage of the lease system is reached when entrepreneurs appear who are willing to assume the responsibility of

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<sup>36</sup>Boston Pris. Disc. Soc. Rept. 1833, p. 75.

<sup>37</sup>Wines and Dwight, *Penal and Reformatory Institutions in U. S. and Canada*, p. 256; Haynes *Hist. of Mass. State Pris.*, p. 223.

<sup>38</sup>*Inside Out*, p. 134.

<sup>39</sup>N. P. A. 1886, p. 221.

<sup>40</sup>*Am. Ec. Assn. Pub. Sec. 3*, Vol. 8, No. 3, p. 235; N. P. A. 1887, p. 161.

<sup>41</sup>*Ibid.*, p. 319.

<sup>42</sup>*Laws Mass.* Feb. 27, 1798.

<sup>43</sup>N. P. A. 1887, p. 319; Boston Pris. Disc. Soc. 1827, p. 83; Wines and Dwight *Penal and Ref. Inst. in U. S. and Canada*, pp. 248-60.

employing, guarding and maintaining the convicts without the aid of any public prison, in lieu of the permission to employ this labor in private enterprise. The lease system in this final stage was used in Illinois and Missouri before the Civil War and is not a southern invention, as is usually supposed, although it was most extensively used in the reconstructed states because of the lack of public prisons and state capital, and because of the peculiar adaptability of the climate of the southern states to outdoor employment.<sup>44</sup> Following the close of the Civil War the rapid increase of the criminal population forced upon the provisional government the question of the detention of the convicts, and the lease system was adopted as an expedient. Perhaps the first prisoners leased to private employers after the war were those of the Penitentiary of Mississippi. A written consent from the prisoner was necessary to employ him under a lease outside the penitentiary.<sup>45</sup>

The apology for the use of the lease system is that the circumstances of the reconstructed states did not permit the adoption of any other. They were not able to provide public institutions and to "follow the excellent example" set for penal matters elsewhere.<sup>46</sup> Raw material had been consumed and not replaced, and the states found themselves with over-crowded prisons and with empty treasuries. Thus began the lease system which "with various modifications has prevailed in all the reconstructed states, some retaining more and some less of the management and control of the convicts."<sup>47</sup> Though the lease system was the outgrowth of necessity, and admitted of the grossest outrages by the lessee upon the unprotected felon, nevertheless the employment in the open which it made possible was highly essential to the health of the convicts. It would have been unwise to confine them in such prisons as were used in the North. "Such a course would have resulted in enormous death rates without any substantial economic gain."<sup>48</sup> Immediately after the war the lease system did serve a purpose, but it has, save in a closely regulated form, outgrown all apology for further existence; and it is, in the more objectionable form, disappearing in the United States. Not only did the events of the Civil War greatly influence methods of imposing compulsory labor in the South, but also in the North specific results attach to that period. The industrial disturbance of 1858 and 1859 caused a stag-

<sup>44</sup>N. P. A. Rept. 1889, p. 85. ff.

<sup>45</sup>Ibid., 1888, p. 60.

<sup>46</sup>Ibid., 1886, p. 135.

<sup>47</sup>Ibid., p. 136.

<sup>48</sup>Ibid., 1889, p. 216.

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nation of prison industry, and the demands for the products of penal labor were further decreased by the closing of the southern market, especially for shoes for the negro slaves.<sup>49</sup> During the war convict labor was used to make army supplies, and prison industry also shared the general (paradoxical) prosperity of that period.<sup>50</sup> After the war the magnitude of prison industry was further increased by the fact that the penal institutions were rapidly being filled with felons sentenced to compulsory labor. The prosperity of the employers of penal labor is apparent from the fact that all the prisons conducted under the state account system were, in 1868, netting a profit; and it was the concurrent testimony of prison officials that contractors of prison labor became wealthy.<sup>51</sup> The social and industrial disturbances of the war period are seen in the North in augmenting the magnitude of prison industry under the contract system, and in the South, in establishing the lease system.

The prevalence of the private control of compulsory penal labor under the contract and lease systems is indicated by the fact that in 1867 "the system of working the prisoners on account of the state was used in but three state prisons"—Clinton Prison, New York, and those of Maine and Wisconsin, and was in partial use in New Hampshire; "while the contract system was the prevailing method of employment in the Northern states and the lease system in the Southern states."<sup>52</sup> In 1874 the contract system prevailed exclusively in twenty state prisons, the lease system in six and a mixed system in seven.<sup>53</sup> In the latter, a part of the labor from which cash revenue was derived was let to contractors and another part was managed by the authorities on behalf of the state. In 1887 the contract system was sanctioned in a pure or mixed form in twenty-eight states, and the lease system in ten states. Among all the states fifteen permitted the use of the state account plan if it seemed to be to "the interest of the state" to do so. But this system usually proved to be the least profitable and the most difficult of administration, and in consequence the contract and lease systems continued unrestricted until the demands for reformation and for freedom from competition between contract prison labor and free labor induced the legislatures of the states to adopt the public account and other systems under public control.

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<sup>49</sup>Hist. of Albany Penit., p. 107.

<sup>50</sup>Haynes, Hist. Mass. Pris., p. 103; Hist. Albany Penit., pp. 92, 107.

<sup>51</sup>Wines and Dwight, Penal & Reform. Inst. in U. S. & Canada, p. 225.

<sup>52</sup>Ibid.

<sup>53</sup>Natl. Pris. Cong., Rept. 1874, p. 393.



In this opposition to the methods of private control, organized labor and prison reformers and penologists have, in the main, stood together, and have presented their united strength in their demands for the restriction of abuses and for the adoption of protective and humane methods. For nearly a whole century free laborers, individually and unitedly, have urged, pleaded for and demanded protection against the unfair and unequal competition with subsidized penal labor; and have requested that the dignity of labor be regarded by imposing it not to torture, but to reform the social offender. The platform of organized labor on the question of penal servitude is clearly presented in a statement issued by the convention of hat makers in 1878, and may be cited as summing up the demands and objectives of free labor on this phase of its concerted effort for self-protection and social betterment. The convention expressed its unalterable opposition to the system of hiring out to favored contractors the labor of criminals; and adopted a resolution that it protest against turning the prisons into private workshops; that the government has no right to tax a business when that government is at the same time lending its authority to destroy the business; that the chief purpose of imprisonment should be the reformation of the criminal; that his earnings should be secondary instead of first; that the prison management should be removed from party politics; and that the convention urge in all states: 1, the abolition of the contract system; 2, the removal of machinery from prisons, and employment of prisoners at hard labor only; 3, employment of prisoners at public works carried on by the state and for the manufacture of articles needed in prisons; 4, the instruction of prisoners in common educational branches; 5, that no merchant who deals in any manner whatever in prison-made articles be patronized directly or indirectly; and 6, that mechanics refuse to work for or with "any man who has been so base as to go to a state prison and instruct convicts in any branch of skilled labor." Since 1823 free laborers have persistently turned to political activity in their efforts to secure protection from the menace of convict labor, but extensive results were not achieved till after the amalgamation and federation of trade unions during the decades of the seventies and eighties.<sup>54</sup> The opposition of mechanics and labor organizations to the competition of prison labor, has, in the main, been directed against the contract and lease system and against the moral indignities which have been brought upon the workman by making his means of livelihood an instrument of punishment and by the scattering of the prison-trained mechanics

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<sup>54</sup>Rept. of Comm. of Lab. 1886, p. 578.

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among the honest citizens engaged in similar trades. The contract system received the brunt of the opposition because it was the most extensively used method of employing compulsory labor, and because the commodity produced under it was such as to be entered upon the market more extensively than the commodity produced under the lease system. The labor directed by the lessee was extensively used in construction work which may displace but does not menace free labor. So long as the methods of private control in unrestricted form were the chief methods of employing compulsory labor, they were thought to be the cause of the unfair competition; but they were merely the apparent cause. The amount of convict labor employed under the state account and piece-price systems was too small to attract opposition prior to the decades of the eighties and nineties; and the public account system was also favored above all the other plans which had been used because it made the state and not the entrepreneur the beneficiary of the prison labor. But after the state account system was extensively employed, it was discovered that even this method of control did not do away with the low competitive menace, and opposition arose also against this plan which had previously been advocated. The explanation for the changed attitude toward the state account system, and the opposition to all the systems which had been tried prior to the last two decades, is found in the fact that the injurious competition does not arise from the nature of the supervision of prison labor and industry, but solely from the fact as to whether or not subsidized goods or commodities of inferior quality are entered upon the price and wage market.

The phenomenal achievement of organized labor, penologists and reformers in obtaining favorable legislation shows that though the industrial revolution and economic necessity are responsible for the organization of laborers and for their program of restrictive and protective legislation, nevertheless the dominant influence in shaping the policy for the employment of convicts is no longer a blind force uncontrolled by organized social action. The new social force of organized labor has been the winning contestant in the controversy over prison management during the last two or three decades. The demands of organized labor have been gradually acceded to by legislatures, and the most recent penal methods are the result of the co-operation of organized labor, penologists and reformers in their effort to secure such a system of employing social offenders as should do away with menacing competition, afford steady employment of a productive, useful and genial kind and recognize the right of the prisoner to humane treatment and to a chance to make good as a citizen. These high

ideals were for the first time in the history of penal matters in the United States embodied in the plan of employing civil offenders known as the state or public-use system. The adoption of this system of state control and state use is the turning point toward the development of the recent methods of controlling compulsory labor.

IV.—The long continued and strenuous opposition by organized labor and reformers against the contract and lease system, has, during the last three decades, resulted in the resumption by the state of the control of compulsory labor. The methods of control which usually followed the abolition of the contract and the lease systems were those of the state account and piece-price systems which at first seemed to offer a solution for the problem of the administration of compulsory labor. But it was soon discovered, on the one hand, that the menacing effect of convict labor upon free labor was not removed; and on the other hand, that employment was difficult to secure and that undue burdens were placed on the state agents in conducting the prison industry under the public account system. To guard against unemployment and against overburdening the prison officers, a combination of public and private control was effected in the adoption of the piece-price system, and further means of employment sought by engaging the labor of convicts in non-mechanical occupations on highways and public lands and farms, and on public works and buildings. While the prison officials found that the public account system as it was usually conducted in prison manufactories was inadequate and unsatisfactory, and were in consequence resorting to the piece-price system, free laborers were, at the same time, discovering that so long as convict labor was entered upon the wage and price market, the menace of the subsidized industry and the low-level competition remained. In consequence, organized labor opposed the state-account and piece-price systems, and advocated the adoption of a system whereby the products of the mechanical industries conducted with prison labor should be disposed of in an especially created market separated from the competitive one, and under the control of the state. If more labor obtained than should be necessary to supply that market, such surplus labor should be employed on public works, highways and public farms in such a way as not to compete with wages or with the prices of the wares produced by free labor. The creation of such a preferred market, it was thought, would not only remove the menace of competition, but also make possible the disposition by prison officials of the wares of prison manufactories, thereby affording sufficient, suitable and healthful employment for the discipline and correction of the prisoners.

Such a plan of employing convicts and of disposing of the prison-

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made wares, is known as the state-use system. "This system provides, in brief, that no prison-made goods shall be sold in the open market, thus reducing the competition with free labor to an indirect competition in that the prison-made products shall, by law, be sold only to the state and its political divisions—the counties, cities and towns, the state and its subdivisions being obligated by law to purchase the prison-made goods at prices determined by a special board, whenever the articles required by the state and its political divisions may be manufactured by the prisons."<sup>55</sup>

Legislation on penal labor, during the last fifteen or twenty years, has been in the direction of some such form of state use and state control of compulsory labor. But the most prominent development during these years is the extension of public control over convict labor under whatever system it may be employed. The maximum control is attained in the state use system, and is lessened in the public account system only by the absence of control over the market. The piece-price, contract and lease systems present less public control, but even in the lease system, the one suffering most from the abuse of private control, the state is extending its supervision and protection to persons subjected to that form of compulsory labor. The tendency is toward both state control and state use of convict labor, and the various phases of the plan of employment known as the public use system are the most complete expression of this development.

The significance of the present-day methods of employing compulsory labor will be better understood by reviewing more in detail the stages above indicated through which the systems of imposing compulsory labor have passed during the last twenty-five years. These stages or steps are: the abolition of the contract system; the adoption of the public account and piece-price systems, or some mixture of state account, piece-price and contract systems; and finally the displacement of these by the adoption of the state use and state control system for both prison and outdoor employment.

During and following the decade of the eighties, the abolition of the contract system in the various states took place in rapid succession.<sup>56</sup> In 1899 the contract was forbidden by eighteen states and territories, including the District of Columbia.<sup>57</sup> In 1905, twenty-eight

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<sup>55</sup>Annual Rept. N. Y. Pris. Assn. 1911, pp. 53-4.

<sup>56</sup>The contract system was abolished in California in 1882, (cf. Eaves, Cal. Lab. Leg., p. 360); in Pa., in 1883; in New Jersey and N. Y., in 1884; in Ohio, Illinois and Wyoming, in 1886, (cf. Com. Lab., 1886, p. 507, ff.); and in Massachusetts in 1887, (cf. N. P. A. 1894, p. 63).

<sup>57</sup>N. P. A. 1899, p. 218, ff.

states restricted the use of the contract after the expiration of the existing agreements,<sup>58</sup> and in 1911 the last vestige of the employment of convicts under the contract had disappeared from twenty-six states, and was in partial use along with other systems in sixteen states, but remained the exclusive means of employment in only three states.<sup>59</sup>

Following the abolition of the contract system, state control of compulsory labor presented a variety of methods of employment, and a confusion of statutes in which various degrees of development of the several systems was present. In some states the public account system was adopted as the principal method of supplying compulsory labor, as for example in Illinois, Pennsylvania and Connecticut; but in other states, as in New York, Ohio, New Jersey and Massachusetts, the piece-price system was permitted in case sufficient employment to keep the prisoners steadily engaged could not be obtained under the public account system. In Wyoming, however, both the contract and piece-price systems, or any employment which offers competition to free labor was forbidden. The prisoners were not to be employed in any occupation whereby their labor should be let to or controlled by any outside person. Nor were they to be employed by any authority, public or private, upon any public work outside the prison, penitentiary, or reformatory in which such convicts were confined.<sup>60</sup> An act of the legislature of Nevada in 1885 directed that such convicts for whom employment could not be obtained under the state account system or at improvement of public grounds and buildings, might, at the discretion of the commissioners of the state prison, be let for hire upon private works. This statute, it is seen, permits the contract and public account system, and, at the same time, institutes a species of the public use system.<sup>61</sup>

The states which permitted the piece-price system found that, though the discipline of the prison was greatly improved by the resumption by prison officials of the control of the labor of criminals, the competition between convict and citizen labor was unmitigated.<sup>62</sup> The piece-price system was highly favored by wardens because it gave them control over the labor and discipline of the prisoners, and at the same time removed the responsibility of performing the function of an entrepreneur.<sup>63</sup> Labor organizations opposed the piece-price system

<sup>58</sup>Rept. of Com. of Lab. 1905, summary of laws, pp. 615-787.

<sup>59</sup>R. B. Hardy: Digest of Laws and Practices Relative to the Employment of Convicts.

<sup>60</sup>Rept. Com. of Lab., 1886, p. 603.

<sup>61</sup>Ibid., p. 569.

<sup>62</sup>Such states were New York, New Jersey, Massachusetts and Ohio

<sup>63</sup>N. P. A. 1894, p. 65, and Am. Ec. Assn. Pub. Sec. 3, Vol. 8, No. 3, p. 246.

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because it admitted private entrepreneurs into prison industry. The wares produced under both the piece-price and state account systems are necessarily entered upon the competitive market, and labor organizations soon learned that the menacing competition continued, and began to oppose both the piece-price and state account systems.<sup>64</sup> When, in the early part of the eighties the public account system was being agitated, its competitive nature was recognized by a few labor leaders, and it was opposed to some extent; but generally it was favored because it made the state the beneficiary of the labor of the prisoners and because it seemed to afford relief from competition. But when it was discovered that competition was not removed by the introduction of the public account system, labor organizations began a more general agitation for the non-mechanical employment of convicts and for the adoption of a preferred market for the products of mechanical occupations conducted in prisons.

The agitation of organized labor has been the chief factor in the abolition of the older systems and in the adoption of the state-use system, as well as the chief cause of the extension of public control under all systems of employment. This fact is somewhat at variance with the idea expressed by Dr. E. Stagg Whitin when he says that "as the control of the state upon prison industries has become greater, the power of labor to restrict them through the control of the legislature has also become greater."<sup>65</sup> This statement makes the restriction upon prison industries a concomitant of the extension of state control, but the reverse is a more accurate statement, for the state control followed as a result of the agitation for the restriction of prison industries. Organized labor has not only been alert in its efforts to guard against unequal competition and against the displacement by convict labor, but has also recognized the desirability of the extension of public control for humanitarian and penological reasons.

The progress in recent years in the resumption of control by the state of convict labor for public use is the dominant characteristic of the most recent stage of the development of the methods of imposing convict labor in the United States. But before entering upon a discussion of the operation of these recent methods of employing compulsory labor, a brief account should be given of the steps in the development of the practice of employing convict labor for the use of the public.

This practice has been brought about only gradually and has been

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<sup>64</sup>Ibid.

<sup>65</sup>Penal Servitude, p. 7.

in process of development since the time when mechanics began their opposition to the introduction of their trades into prison industry. In 1839 the journeymen and master cordwainers of the District of Columbia memorialized Congress on the detrimental effect of the prison shoe industry, and urged that the prison-made goods be applied to the use of the army and navy and other public institutions. In 1862 Congress complied with this request and set the precedent for the creation of a special market for the products of prison labor.<sup>66</sup> These statutes directed that the warden should, so far as practicable, employ the convicts in the manufacture of shoes for the army and navy, to be made as the departments should direct. Orders were to be given by the departments at the request of the warden, and the shoes were to be paid for at the customary rate for shoes of like quality. In 1886 the laws of Ohio sanctioned the employment of a portion of the convicts in the manufacture of articles used by the state in conducting the penitentiary; and the warden, under the direction of the board of prison commissioners, was empowered to procure machinery and prepare shop room for this purpose.<sup>67</sup> The statutes of Nevada in 1887 provided that prisoners employed in the boot and shoe shops of the state prison should make all the boots and shoes required to be used in the state prison; and the managers of other state institutions should be supplied with boots and shoes from the prison shops for the use of such wards of the state as they might have under their charge. If any surplus product remained, it was to be offered for sale at a price not less than the cost of the material, and in wholesale lots only.<sup>68</sup> Massachusetts adopted a similar law in the same year, 1887. Such articles were to be manufactured as were in common use in the several state and county institutions, and were to be sold at the wholesale price of goods of like kind and quality.<sup>69</sup> The revised constitution of New York as adopted in 1894, forbade the employment of prisoners "at any trade, industry or occupation wherein or whereby his work, or the product of his work, shall be farmed out, contracted, given or sold to any person, association or corporation,"<sup>70</sup> but granted that convicts might work for, and the products of their labor might be "disposed of to the state or any political division thereof, to any public institution owned or managed and controlled by the state, or any political division thereof." These new methods of employing convict labor de-

<sup>66</sup>Stone, Albert and Lovejoy: *Comp. Statutes, D. of C.*, p. 430.

<sup>67</sup>Rept. Com. of Lab. 1886, p. 531.

<sup>68</sup>Rept. of Com. of Lab. 1905, p. 713—Ch. 91 Laws, 1887.

<sup>69</sup>C. D. Wright, *N. P. A.* 1899, p. 216. ff.

<sup>70</sup>Rept. Pris. Assn. of N. Y. 1895, p. 895.

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manded by the constitution were formulated in the statutes in 1897 and again in 1901.<sup>71</sup> In 1899 twenty-four states provided for the state use features of the public account system,<sup>72</sup> and in 1905 thirty-four states made such provisions.<sup>73</sup>

The operation of the public-use system may be illustrated by a description of the plan adopted by New York in 1897. In this plan the prison industry is under the control of a prison commission which consists of three members appointed by the governor, by and with the advice and consent of the Senate.<sup>74</sup> The commission has the authority to require the officials of the state and its political divisions and institutions to furnish to the commission annually, for each ensuing year, estimates of the amount of labor and manufactured articles required by the respective political divisions and public institutions. Employment which shall not exceed eight hours a day, shall be for the purpose of supplying state and other public institutions with needed articles, and "for the purpose of industrial training and instruction, or partly for one and partly for the other of such purposes. \* \* \* The labor of the convicts in the state prisons and reformatories, after that necessary for the manufacture of all needed supplies for such institutions, shall be devoted primarily to the state and the public buildings and institutions thereof, and secondly to the political divisions of the state," and their public institutions. The superintendent of the state prison distributes among the penal institutions under his jurisdiction, the labor and industries assigned by the prison commission to these institutions. Due regard is to be had for the most advantageous distribution of the labor, and the prisoner is to be employed, so far as practicable, in occupations in which he will be most likely to obtain employment after his discharge from imprisonment. No articles manufactured in the prison shall be purchased by the state or its public institutions from any other source unless the state commission of prisons shall certify that the same cannot be furnished upon requisition; and no claim for the payment of goods purchased elsewhere shall be audited or paid without such a certificate.

The state-use system as adopted by New York has been subjected to the scrutiny of commissions from various states, and has furnished material for extensive discussion and debate. The advantages claimed for it are: (1) That it makes the least possible impression on the

<sup>71</sup>Rept. Com. of Lab. 1905, p. 723.

<sup>72</sup>N. P. A., 1899, pp. 218-219. These states are: Ark., Cal., Ind., Ia., Ka., Mass., Mich., Minn., Miss., Mo., Neb., Nev., N. H., N. J., N. Y., N. C., N. Dak., O., Pa., Tenn., Utah, Wash., W. Va. and Wis.

<sup>73</sup>Rept. Com. of Lab. 1905, pp. 615-787.

<sup>74</sup>Ibid., p. 724.



rates of wages and the prices of goods. To be sure, the quantity of prison-made goods consumed by the state and its institutions reduces the product of outside industry to an equal extent, "but there is no impression on the vital elements of industry—prices and wages."<sup>75</sup> The principle of the greatest diversity of industries coupled with a complete supply for the special market for any line of goods manufactured, best preserves the laboring class from competition with convict labor.<sup>76</sup> (2) Under the state-use system machinery is not used to any great extent. "The use of the powerful machinery is one of the most aggravating sources of annoyance to workingmen. The use of hand machines, or the production of goods by hand, reduces this source of attack to a minimum, and at the same time it enables the prison authorities to keep the prisoners almost constantly occupied in producing the goods required of them." (3) The educational benefits are greater under the state-use system than under any other. Hand labor is essential to the trade and technical education of the prisoners. Machinery is used only where it would be highly impracticable to perform the work by hand. (4) The state-use system has in some instances proved as remunerative as the older systems, but the financial returns are not the gauge of the desirability of the system, or of its productiveness. For whatever the prices may be as fixed by the board of control, the state, i. e., the people at large, get the benefit whether the figures show it or not. The employment of prisoners for public use has for its primary object, not a monetary return, but the reformation of the criminals, their instruction in elementary, technical and trade education and the lessening of the competition between convict labor and free labor. Wherever this system is adopted the question as to whether or not the prisoners should be self-supporting is answered in the negative. "The ignoring of the treasury except incidentally is the greatest advance in the question of prison labor." The middlemen's profit is saved to the prisons, and the institutions pay no more than retail prices. (5) The employment of the prisoners for the benefit of the state has a salutary psychological influence on the persons so employed. Their attitude toward their work is changed when they are giving it for the benefit of the state and no one person drives them. (6) The state-use system is a solution of the troublesome question of convict labor, for it works to the satisfaction of workingmen and manufacturers.<sup>77</sup>

Though the state-use system has many advantages, it at the same

<sup>75</sup>N. P. A. 1899, p. 226 [Address by C. D. Wright].

<sup>76</sup>In 1901 there were 26 separate industries and 75 trades carried on in the N. Y. prisons.

<sup>77</sup>A. F. of L., Rept. Ann. Convention, 1897, p. 22.

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time has several disadvantages which are generally recognized. (1) The volume of the demand of the preferred market may not be sufficient to keep the prisoners employed. This obstacle is, however, in a large measure overcome by extending the preferred market, by introducing a greater variety of occupations and by the application of trade and technical education whenever there are any idle prisoners competent of instruction.<sup>78</sup> (2) The prisoners are not sufficiently skilled and their trades are not varied enough to produce the articles needed in the public institutions; and this lack of ability will concentrate their labor on a few occupations, with the consequent unemployment. (3) In some quarters there has been opposition to the use of the prison-made goods because of a supposed stigma attaching to such goods. (4) The success of the state-use system is contingent upon the ability of the few men directing the prison industry. (5) It is a competition in another guise. (6) It is not permanent and is unprofitable in actual monetary returns.<sup>79</sup>

Not only has public control and public use of compulsory labor been extended to occupations carried on within prisons, but also to such labor imposed outside prison walls. Outdoor labor for criminals was resorted to extensively first under the lease system in the South. But as the revival of industrial conditions made possible the adoption of other means of employment, and as public sentiment demanded the suppression of the abuses of unrestricted private control of the labor and the person of the prisoners, outdoor employment of the convicts was either put under supervision and inspection,<sup>80</sup> or taken completely into public control. This outdoor labor under the control of the state may be applied solely for public use, as for example, building roads, improving public land or erecting public buildings; or it may be carried on for both state use and state account, such as the cultivation of public farms, the products of which, after satisfying the demands of the public institutions, are sold on the market. Quarrying and mining are conducted similarly to the farms, the surplus of the product not used by the public institutions being sold on the competitive market. The convicts hired out under the supervised lease system are employed

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<sup>78</sup>Mass. sought to obviate this difficulty by providing that, in the preliminary stage of the system, if goods should be manufactured beyond the demand, they might be sold on the open market under restrictions. [Laws Apr. 4, 1898 & N. P. A. Rept. 1899, p. 221.]

<sup>79</sup>N. P. A. 1899, p. 225, ff., and 1905, p. 258, ff.

<sup>80</sup>In South Carolina, until 1881, all able-bodied men were hired out to contractors, but by 1889 that was abandoned and the prison officials fed and clothed the convicts, and sent medical aid with the prisoners employed on railroads or otherwise under private control.

on railroads and other construction work, on farms, and in mines and quarries.

Some states have taken over completely the control of outdoor employment by abolishing the lease system, but in others a variety of systems exist, in all of which, however, state inspection and supervision is established, and private control and enterprise is greatly restricted. Outdoor employment for prisoners is gaining favor for both industrial and penological reasons, and it is urged that the labor of selected convicts be employed in reclaiming and improving public lands; draining swamps, damming streams; digging canals; preparing road material of stone, brick and tile; "establishing and maintaining ideal farms, typical wood lots, and model forest reserves." This work of conservation has a few examples in the various states, and very desirable results have been attained.<sup>81</sup> Outdoor employment solves the problem of light, ventilation and sanitation; it gives the variety of motion required for the restoration and maintenance of the health of the prisoners; it can be done with less previous knowledge and skill than most other forms of productive labor, and misdemeanants can in consequence be set to work at once. Outdoor labor is applied largely to public use, and competes in the least attainable degree with free labor.<sup>82</sup> It offers the most favorable conditions for effective classification of prisoners, and can most readily be managed to offer a premium for good conduct.<sup>83</sup>

The extension of public control of compulsory labor as exhibited in the various methods of employment in outdoor occupations and in manufacture for state use, is the prevailing tenor of the legislation of recent years. Along with this advance, various reforms, humanitarian, and relief measures are made to attach to compulsory labor which is coming to be regarded not as a punishment but as a means for physical and mental restoration, and as a medium for social readjustment of corrigibles. During the last three years the legislation shows definite tendencies toward the assumption by the state of its responsibility "for the use of prisoners on state lands, in state mines and as operatives in state factories; while in distribution the competition of the open market, with its disastrous effect upon prices, tends to give place to the use of labor and commodities by the state itself in its manifold activities." During 1911 no state legislature gave new powers of leasing or contracting for the labor of prisoners, and one only, Idaho, extended the field of the existing leases; twenty-one made some provision for the state's assumption and operation of industries; eight provided in

<sup>81</sup>Henderson, *Outdoor Convict Labor*, p. XIII; N. P. A., 1906, p. 329.

<sup>82</sup>American Prison Assn., 1911, p. 252, ff.

<sup>83</sup>N. P. A. 1906, p. 329.

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some manner for the states' assumption of the manufactured articles,<sup>84</sup> and six established laws for the regulation of prices and standardization of commodities.<sup>85</sup> The prisoners received compensation for their labor in six states,<sup>86</sup> and their dependent families are given aid in five states.<sup>87</sup> In the last named states, prisoners' families dependent on charity are relieved by the commissioners of charities at the rate of fifty cents for every day the prisoners work, but this relief is limited to five per cent of the value of all goods produced. Nevada gave the right to choose between working indoors or on the roads. Florida met the peonage issue by a provision for working off fines during imprisonment; and the antagonism of organized labor to the distribution of the products of the convict labor on the open market resulted in the passage in Montana, Oregon and California of laws requiring branding of convict made goods. The economic progress in prison labor is in the direction of more efficient production, more economical distribution, elimination of the unfair competition with free labor in the open market, and the curtailment of the slave system by the provisions for wages and for choice of occupations for those sentenced to compulsory labor.<sup>88</sup> During 1912 and 1913 the tendency continued toward the elimination of convict labor from the open market, and toward the assumption of control of this labor for public use.<sup>89</sup> Five states forbade the contract and lease systems;<sup>90</sup> five made provision guarding against competition with free labor,<sup>91</sup> and two authorized the formation of convict labor commissions on which labor unions are represented;<sup>92</sup> three provided for the remuneration of prisoners and the relief of their families,<sup>93</sup> and twelve extended former regulations or made new provisions for public use of prison-made commodities and for employment of convicts on public roads, in mining and quarrying, on public farms and at conservation work on public lands.<sup>94</sup> Other prominent reform measures are the parole system and aid to discharged prisoners in securing employment; establishment of farm colonies for the physical and moral rehabilitation of paroled men; the industrial farm colony

<sup>84</sup>Cal., Idaho, Ind., Mo., N. J., N. D., O., Wy.

<sup>85</sup>Cal., Ind., Mo., N. Y., O., Wy.

<sup>86</sup>Fla., Ken., Mich., Nev., R. I., Ind., Wy.

<sup>87</sup>Cal., Me., Mass., Mo., and N. J.

<sup>88</sup>Rev. of Lab. Leg. Oct., 1911, pp. 123-128. For a concise statement of the attitude of organized labor toward convict labor see Annals, Mar., 1913, pp. 127-141.

<sup>89</sup>Am. Lab. Leg. Rev. Oct., 1912, p. 486, and Oct., 1913, p. 411.

<sup>90</sup>Ark., Ia., N. J., O. and Ore.

<sup>91</sup>Ka., N. J. and Pa.

<sup>92</sup>N. J. and Pa.

<sup>93</sup>Ia., Ka. and O.

<sup>94</sup>Neb., Wis., Mass., Ia., Ka., N. J., Okla., Ore., Ky., Md., Miss., N. Y.

for "the detention, humane discipline, instruction and reformation of male adults committed thereto as tramps and vagrants";<sup>95</sup> probation for the feeble minded; commutation of sentence for good behavior; and protection for the prisoner by sanitation and the requirement of a physician's certificate for the employment of a prisoner in an unhealthful occupation.

There is not much unanimity of public sentiment on the question as to whether prisoners should be self-supporting or not, and the imposition of penal labor is urged from a variety of motives or intents. But the part labor plays in the psychology of the social offender is recognized generally, especially among penologists. This recognition is not, however, peculiar to the present time; for labor has, throughout the past century, been recognized as a means for the reformation of the criminal, and as a boon and humanitarian concession to those deprived of their freedom. Nor are the many humane, reform, preventive and relief measures a product of the day, but have evolved throughout the decades; and, indeed, some of them are a reversion to former practices and theories. Such are the relief of dependents and the sharing by the prisoner in the result of his labor, and the reformation of the offenders.<sup>96</sup> The chief differences lie in the means by which these aims are sought. There has been throughout the past century, as there is also today, much uncertainty, except among reformers, as to which of the objects of imprisonment should be uppermost in dealing with the social offenders—whether protection of society, punishment for crime, reparation, or the reformation of the criminal; or whether the prime object of imposing labor is to force the criminal by this form of punishment to earn his own living, or to provide a solace during the days of imprisonment and aid in the reformation of those whom society deems it expedient to deprive of their freedom.

Two forces have been active in shaping not alone the motive of imposing compulsory labor, but the form of its imposition and control as well. One is humanitarian and expresses itself in the effort to reform the social offender. The other is the reflex of utilitarianism and of material necessity, and expresses itself in the desire to make the labor of the prisoner as remunerative as possible and ignores the claims of "humanity." Neither one of these forces alone explains the development of the methods of controlling compulsory labor; for although the activities in securing the material necessities determine the form of

<sup>95</sup>Am. Rept. Prison Assn. of N. Y., 1911, p. 41.

<sup>96</sup>Penn. Jol. of Pris. Disc. Vol. 4, p. 112. Rept. Inspectors of Prisons of N. Y., 1856-7, p. 9. Wines and Dwight, Pris. and Ref. Inst. U. S. and Canada, p. 44; David Dyer, Hist. of Albany Pen., pp. 9-10.

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institutions, and in a measure ideals, there is "certainly something more in history than a blind surge. Men act together because they see together and believe together. An inspiring ideal as well as the next meal makes history."<sup>97</sup> The stages in the development of the methods of controlling convict labor are symptomatic of the complex of these forces. Both the method and the spirit of imposing such labor have been in process of evolution, and although the forms of the systems under which penal industry has been carried on have responded to, and were determined in the essential features by, industrial conditions, the motive of imposing punitive labor today is determined less by economic necessity than by the ideals of humanity, unless it be said that reformation is held to be more remunerative to society than the compulsory labor of the offender. The economic demands upon the labor of convicts in the industrial status today is that his labor shall not be a menace in competition with free labor, and that his labor shall, if possible, restore him to citizenship capable of earning an honest living. The demand for freedom from the competition with convict labor has developed along with the growth of the factory system and the expansion of the market. The result of this industrial change was to bring the free labor of one community into competition with free labor of another community; and this together with the conflict between the worker in his endeavor to improve his condition through higher wages, and the consumer in his endeavor to purchase in the cheapest market, reacted detrimentally upon the standard of life of the worker. The effort of labor unions to regulate this conflict and to eliminate all low plane competition, and of reformers to establish social justice, gave rise so far as convict labor is concerned, to a new form of imposing compulsory labor; namely, that of state control and state use. This new system is not an isolated phenomenon, but is the culmination of a development through preceding stages in the plan of imposing and controlling such labor. Each of these stages of development is characterized by a dominant method of controlling compulsory labor and conducting the prison industry. These methods respond to the manner of the employment of free labor and the operation of free industry and to the motives which penal labor is meant to serve; and in consequence there appears an historic sequence in the system of controlling labor either as a punishment for crime or as a means for the reformation of the criminal.

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<sup>97</sup>Doc. Hist. of Amer. Ind. Soc. V. 7, p. 22.