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LABOR UNIONISM AND CONVICT LABOR.

E. T. HILLER.¹

The present tendency toward public control and public use of prison labor is to a large extent the achievement of the political activity of organized labor. The question of convict labor and its relation in competition to free labor has grown increasingly important in recent years and is receiving increased prominence in the discussion and attempted legislation of trade unions. In the political and legislative propaganda many and varied demands are made looking toward the regulation of competition, rather than the abolition of penal labor, and toward the improvement of the methods of dealing with the delinquent and social offender. Among the specific measures for protecting the citizen mechanic against a menacing competition and the convict against exploitation, may be named the following points: Public control and public use of convict labor, restriction of occupations which may be introduced in prison industry, limiting the number of prisoners employed on marketable wares, limiting the hours of employment of convicts, preventing interstate shipment of prison-made goods, forbidding importation of raw or finished material upon which any penal labor has been bestowed, branding all prison-made goods, restricting the use of powerful machinery in prison industry, demanding hand processes so far as possible, and giving recognition to the right of the prisoner to healthful employment, humane treatment, receiving awards for his dependent family, and a new chance to make good as a citizen.

These points in the political and legislative program of organized labor represent the official attitude and demands. Individually and locally a great variety of opinions and sentiments, however, have been held; but the official utterances have never urged that prisoners be maintained in idleness, but have sought to regulate the displacement of citizen labor by convict labor and to minimize the evils of unequal competition between subsidized and low-plane prison labor and that of free citizens. The menacing effect of a subsidized and low-plane competition has been more or less clearly recognized by labor leaders and has been the chief motive for the opposition against the unregulated convict labor as it existed throughout the greater part of the last century. A second reason for this opposition is the moral injustice of impairing the means of livelihood of honest citizens by the labor of those who have violated the law of the state. A third rea-

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son is the inhumane treatment of prisoners by private employers and contractors. For these reasons citizen mechanics have incessantly striven for state control and state use of convict labor during a period of more than three-quarters of a century, and extensive legislation in that direction has been effected in the last twenty-five years.

The specific demands made by free labor and the motives which prompted its agitation for the modification of former methods of employing convicts under the various methods of private control—the contract, lease and piece-price systems—can be understood only by a reference to the growth of the moral and penological principles and economic or industrial evolution of our country since Colonial times. The tracing of this development of penological and industrial methods in relation to the conflict between convict and free labor is the task undertaken in this study. The period surveyed is that of our industrial revolution, beginning near the opening of the nineteenth century; but a brief account will be given of the economic significance of convict labor in Colonial times as a background for the awakening and changes which came in the manner of imposing penal labor in the first quarter of the last century. The moral, philanthropic and penologic aspects of the question must receive some notice to give a fair representation of the problem involved in the conflict between convict and free labor, but they will be presented only incidentally to the main line of thought—the economic laws and origin of this competition, and the demands and political program of organized labor looking toward the control of prison industry. However desirable it might be to discover and trace the separate springs of action of labor unions in their political career it would be impossible to isolate and appraise the component interests and purposes, for life is a whole and the economic, selfish and altruistic motives of action cannot be altogether separated in description or practice. Hence no estimate will be made of the relative importance of the various motives which have influenced the attitude of free labor toward specific conditions of convict labor. It is sufficient to observe that labor unionism has been increasingly victorious in obtaining restriction and public control of prison industry, and, with the co-operation of penologists and reformers, has brought on a more humane treatment of convicts in the imposition of penal labor.

In tracing the relation of free labor to convict labor, three forces must be considered. On the one hand are the development of the methods of penal discipline and prison control and the growth of the industrial processes; on the other hand is the force of organized

labor in its endeavor to protect its means of livelihood from unequal competition. We will hence discuss I. the development of the methods of punishing convicts by imposing compulsory labor as a substitute for other forms of punishments, especially during the nineteenth century, with a brief account of the conditions in the eighteenth century; II. penal labor as an industrial factor, comprising the development of the manner of employing convicts as affected by the industrial revolution, and the economic significance of prison labor as a source of competition with free labor; and III. the political activity of labor unionism in its endeavor to limit the extent and nature of the competition with the subsidized and low-plane convict labor.

I. The method of punishing offenders against society and the manner of housing them underwent radical changes during the early part of the nineteenth century. Some of these reforms had important bearing upon the later problem of competition between convict and free labor. (1). The amount of potential convict labor was increased by substituting labor and imprisonment for other forms of punishment. (2). The persons sentenced to imprisonment with labor were brought together in large state penitentiaries and thereby increased the severity of the competition with citizen labor in the locality of the prison.

(1). During the eighteenth century penal labor was imposed in only a few of our colonies. In so far as it was used, it was applied either by imprisonment with labor, by the use of the indenture whereby convicts were bound out to serve private citizens for a prescribed term, or by imprisonment by night and employment on public streets and public works by day.² Massachusetts, Connecticut and Pennsylvania made extensive use of labor as a penal instrument during the eighteenth century, but the other colonies, it appears, did not impose such penalties, but inflicted corporal punishment as a means of correction or retribution. Also the first state laws enacted immediately after the Revolutionary War left the punishment for crime unmitigated in severity, save, perhaps, in Pennsylvania. But the rigor of the penal codes was toned down in later revisions of the laws of the various states and labor was made an alternative or a substitute for corporal, and lastly, to some extent, for capital punishment. There was thus an increased number of crimes punishable by labor, and means of employment was sought by extension of workhouses among the counties and by the establishment of

²Jour. of Criminal Law and Criminology, July, 1914, pp. 242-244.

state prisons and penitentiaries.³ For example, in New York in 1788 the death penalty was attached to eleven crimes, and the justices of the sessions were authorized to punish disorderly persons and vagrants by six months' imprisonment and whipping. But in 1789 the act was modified by adding hard labor to the imprisonment of disorderlies and vagrants and leaving the whipping to the discretion of the courts.⁴ In 1796 the death penalty was imposed only for crimes of murder, treason and stealing from a church, and "imprisonment only" or imprisonment with "hard labor" was imposed for other offenses for which corporal punishment had formerly been inflicted.⁵ In a similar manner, as the prison reform extended among the other states, compulsory labor was invariably provided for in the new statutes. In 1829 ten states had adopted a revision of their penal codes, but the other states "retained their old systems with no reform and no labor that would accustom the prisoners to an honest mode of sustenance."⁶

The substitution of labor with imprisonment for other forms of punishment was one of the great penal reforms of the first half of the last century and was a part not only of the general improvement in the method of dealing with the offenders against society, but also of the general humanitarian development and expansion of the social consciousness of that active and fertile period of our history. But specifically the introduction of labor into prisons was urged because "it is productive, it is healthful, it teaches convicts how to support themselves when they leave prison, it is reformatory, and is consonant with republican principles."⁷ In advocating the adoption of labor in penal methods it was argued that the financial and disciplinary advantages go hand in hand.⁸ "But there was a melancholy reverse to this picture. There is much reason to believe that as a penitentiary, the system was utterly inefficient for purposes of reform or amendment. Indeed in nothing else than as a place of personal labor and restraint

³Ibid., p. 245.

⁴T. E. V. Smith, *New York City in 1879*, pp. 13-14.

⁵Laws of New York, March 26, 1796.

⁶Boston Pris. Disc. Soc. Rept. 1829, p. 31; de Beaumont and de Tocqueville; *Penitentiary System in U. S.*, p. 12.

⁷Boston Pris. Disc. Soc. Rept. 1829, p. 34.

⁸Ibid., Rept. 1828, p. 16.

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was it a place of terror or punishment."⁹ But whatever abuses inflicted in the imposition of labor may have been, it is not probable that they were as vicious as the mental, moral and physical deterioration caused by idle aggregate or solitary cellular imprisonment, and were due to a lack of insight into the penological and moral significance of proper administration of penal labor. This was in the early days of our "penitentiary system" when no technique for the management of these prisons or regulation of punitive labor had been acquired by experience. The abuses were not inherent in the use of labor itself, and its adoption as a penal instrument continued throughout the first half of the century as a part of the prison reform movement. But the increase of the supply of convict labor by substituting it for corporal punishment together with other causes involved prison industry in keen competition with the trades of citizen mechanics.

(2). A second cause for the development of this competition was the concentration of convicts sentenced to penal labor in the newly established state prisons and penitentiaries. Though this bringing together of felons into large convict-holds did not itself increase the potential supply of prison labor, it did increase the effectiveness of competition of this labor in particular localities. This system of housing also made possible the introduction of the factory processes and thereby made prison manufactures effective in competition with free industry.¹⁰ The erection of state prisons and the concentration of convicts occurred in all the states whether they had imposed penal labor prior to the prison reform or not. Before this time convicts were confined (and employed so far as labor was imposed) in county workhouses and in "gaols" and each community provided the means of imprisonment or of employment. But near the beginning of the nineteenth century the states began to provide prison houses and employment for certain classes of felons; and gradually this became the familiar and conspicuous means of detention and correction.¹¹

This concentration of convicts in state penitentiaries was fostered by perhaps two factors—one penal and civic, and the other economic. Criminals of higher degrees were sent to the state prisons for safer detention and more rigorous discipline than could be main-

⁹Ibid., Rept. 1826, p. 43 (extract from Gov. Lincoln's message, Jan., 1826). The deteriorating effect of penal labor viciously imposed is described at length in "Inside Out; Or, Interior Views of New York State Prison," pp. 18-22.

¹⁰Jour. Criminal Law and Criminology, July, 1914, p. 242, ff.

¹¹Ibid., p. 245, ff.

tained in the county workhouses.¹² Also it was deemed more equitable that the state should provide the means of imprisonment and employment for convicts who were wards of the whole commonwealth rather than of the counties where the crime may have been committed. The increased number of persons sentenced to imprisonment with labor under the new statutes substituting labor for other forms of punishment further made it necessary to enlarge the means of detention and employment. This the state could do most economically by erecting large prisons and workshops. This concentration of prisoners made possible the aggregate or factory methods of employment and thereby increased the industrial efficiency of prison manufactures, prepared the way for the contract system and accentuated competition with free citizen labor.¹³

II. The effectiveness of this competition and the manner of employing prison labor are greatly influenced by the industrial development. This influence is operative in several ways. (1). The plan of supplying raw material, supervising the work and disposing of the wares of prison manufacture tend to conform to the method of carrying on free industry in any given period of the industrial revolution. (2). The significance of convict labor as a source of low-plane competition depends on the growth of the factory system, the expansion of the competitive market and the separation of classes and functions in the processes of production.

(1). The method of imposing compulsory labor is determined by a mixture of forces and motives—economic, penological and humanitarian, but the general form of the employment of this labor has in our country been determined chiefly by, or tended to conform to, the manner of performing processes in the concurrent free industry. The employment of penal labor during the past century has characteristic features determined by the growth of the factory system in free industry. But these methods are a modification of those prevailing in the previous stage of our industrial revolution, and hence we will consider very briefly (a) the methods of imposing penal labor in the so-called colonial stage of our industrial history, limiting the discussion to the eighteenth century; (b) the period of transition of penal methods in the first quarter of the last century, during which time the state prisons were being established and the aggregate method of employing convicts was being introduced in prison

¹²Laws of N. J., Feb. 15, 1798; of Mass., Mar. 15, 1805; of N. Y., Mar. 26, 1796.

¹³Jour. of Criminal Law and Criminology, July, 1914, pp. 242, 247.

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manufactures, and (c) the factory method of employing convicts under private competitive methods which is lately being superceded by state control and state use of prison labor.

(a) During the eighteenth century, as has already been intimated, convicts were employed, in so far as penal labor was imposed, either under the indenture or in workhouses and "gaols." Under the indenture employment was of course, supplied in a direct personal manner. This was also the case with misdemeanants sentenced to the workhouses if the persons so punished had relatives or masters in the community. If the prisoners were not the wards of residents of the county, the keeper of the workhouse or "gaol" provided employment. This individual method of employment was in keeping with the industrial condition of the period, and was feasible because the means of production were, as is the case in the domestic stage of production, under the control of the separate family household. The domestic stage of our industrial development is characterized by small-scale production; the market was personal and local, the business was customs-order, and competition existed between the quality of goods and not between their prices as is the case under the factory system.¹⁴ Production was performed either by itinerant tradesmen who carried on their work in the homes of their customers or by merchant-masters who employed a few journeymen and directed the business. In the former case the material was furnished by the customer, in the latter, by the merchant-master. The method of employing convicts and of disposing of their wares was patterned after the manner of performing free industry. The indentured convict, if he were skilled in any craft was employed in the home-shop under the direct supervision of the merchant-master lessee. If he were not skilled he was under equally close personal supervision. The use of the indenture was possible because of the scarcity of labor and the consequent lack of popular sentiment against the presence of convicted persons in the occupations of free citizens. The method of supplying the means of employing persons committed to the houses of correction or workhouses was also in keeping with the prevailing industrial condition. In the handicraft stage of production competition existed not between prices, but between the qualities of goods. Hence, to guarantee a good return from the labor of the prisoners employed at a craft it was only necessary, as in the case of free craftsmen, to guard against poor workmanship and demand prices in keeping with the

¹⁴Doc. Hist. of Amer. Ind. Soc., Introduction, Vol. 3.

qualities of the goods. Barring a concentration of prisoners in a community with its personal and local market and consequent oversupply of wares, such a profit was possible provided the keeper was able to bargain successfully with the customers. It was expected that there would be returns from the labor of the prisoners in excess of the cost of their maintenance, and, no doubt, such was the case prior to the erection of the state prisons; and it was expected that even in these there would be a profit accruing from the labor of the inmates. But a change from this simple colonial method of providing employment and disposing of the wares of prison labor was brought about by two factors; namely, first the breaking up of the domestic and journeyman stage of industrial processes which made it impracticable for the family to provide employment, thus making it necessary for the state to perform that function, and which required that prison-made wares be entered upon the competitive market; and second, the increase of prisoners sentenced to hard labor and their concentration in the state prisons and penitentiaries. In the colonial period, to repeat, no detrimental competition existed between free labor and convict labor because the prison-made wares were used by the wards of the prisoner, because of the scarcity of labor in the new country, and because competition in wares and labor was between qualities and not between prices.

(b). The transition between this colonial status of controlling and employing convict labor and the subsequent factory method was brought about by the industrial and penologic development of the first quarter of the last century. During this transitional period the state prisons were developed, penal labor adopted as a means of correction and punishment, and the aggregate method of employing prisoners was instituted. The responsibility for the employment of convicts was wholly assumed by the state, and the wardens of the state and county prisons became entrepreneurs on behalf of the public in directing the prison industry. The warden or agent secured the raw material, tools and machinery, directed the process of production and disposed of the commodities on the competitive price market.¹⁵

In economic history the first quarter of the century is known as the genesis of our factory system and of our labor problems. "The factory system secured its first real foothold . . . between 1806 and 1815, when the War of 1812, by suppressing trade with Europe,

¹⁵Jour. of Criminal Law and Criminology, July, 1914, p. 245, ff.

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forced the American people to do their own manufacturing, and turned large amounts of capital which had previously been employed in trade and shipping into manufactures. The growth during this period of isolation was extraordinary¹⁶ and continued with increasing momentum through the decades. Professor Ely designates the years from 1789 to 1825 as the "germinal period" in the history of American trade unionism. During these years "a separate class of wage earners was appearing, who were especially appealed to by new arguments concerning wages in the tariff discussions; workingmen's parties were organized; strikes and trade unions multiplied, and the latter were combined into municipal and state federations."¹⁷ These growing factory methods and rising labor movement are reflected also in the manner of supplying and directing the employment of convicts in prison manufactures. In this transitional period the state performs the function of the merchant-manufacturer in supplying the raw material and tools, directing the work and searching for a market for wholesale and retail orders. The state laws directed that the prison officials should "vend and dispose of all articles manufactured in the prison."¹⁸ Goods were sold in retail lots from stores,¹⁹ and in wholesale lots by shipment.²⁰ Transportation facilities and the site of the prison played an important part in the em-

¹⁶R. T. Ely: *Outlines of Economics* (1912), p. 73.

¹⁷*Ibid.*, pp. 73-74, 84.

¹⁸Laws of Mass., Mar. 13, 1806; of N. Y., Mar. 26, 1796.

¹⁹In 1806 the officials of the Massachusetts State Prison relate that "The shoemakers are employed in supplying the prisoners and making boots and shoes for sale. * * * Store No. 8, on Green's wharf in Boston, is occupied as a 'State Prison Warehouse' for the reception of raw materials, etc., and for vending the various articles of manufacture, which are deemed by competent judges to be of the best quality and exhibit favorable specimens of ingenuity."—*Account of Mass. State Prison by the Board of Visitors* (1806), p. 45.

"For many years after the erection of the New York State Prison the agent purchased all raw material" and sold the wares from a prison store (G. Powers' *Account of N. Y. State Prison at Auburn*, p. 25). In 1835 the N. Y. Central Trades Union reported that a certain Elisha Bloomes sold his prison-made wares from a store which bore the sign, "Trades' Union Hat Store," expecting that the sign would obtain custom (*Hist. of Amer. Ind. Soc.*, Vol. 5, p. 231). In 1839 the cordwainers of the District of Columbia memorialized Congress, representing that "a certain Andrew Hoover had recently opened an extensive 'boot and shoe store,' * * * that said 'boot and shoe store' is chiefly furnished by the labors of convicts let out by contract, that said Hoover, purporting himself to be a manufacturer, is thus enabled by the cheapness of convict labor to furnish boots and shoes at such low prices as to insure to his establishment a great and increasing custom." (Sen. Doc. No. 174, 25th Cong., 3d Sess., Vol. 3; see also *Hist. of Amer. Ind. Soc.*, Vol. 5, pp. 53-56.)

²⁰"Also the delay and the distant market—much being shipped to New Orleans—constituted loss and hazard."—G. Powers' "A Brief Account of New York State Prison," p. 53.

ployment of convicts and in finding a market for their wares.²¹ The procuring of machinery and raw material for the prison manufactory received prominent consideration.²² Foremen or "instructors" were hired to direct and oversee the prison workshop if the warden were not skilled in a given craft or process. These instructors were sometimes merely "favored convicts whose feeble or incompetent instruction was resented by the 'learning' prisoner."²³

A resemblance between the status of free industry and prison manufacture is thus seen in the manner of furnishing capital, raw material and tools, in supervising the process of production, and in searching for the market. But prison labor is not an integral part of the industrial world, and is removed from the ordinary economic necessity of acting in accordance with the industrial laws. For example, the state can maintain the prisoners in idleness, or can underbid the market and sell wares indefinitely below the cost of production. But the demand that prison labor be as remunerative as possible and that at the same time it be wholesome in its influence upon discipline, reformation and health makes the problem of administering this labor a very difficult one. This was the case also in the early part of the century, and several adverse circumstances in the management of prisoners and of convict labor was involved in these penal and industrial demands. These adverse conditions were: (x) scarcity of work and consequent heavy prison expenses; (y) overburdening the wardens with industrial and administrative or disciplinary duties; and (z) resulting from both the inadequacy of employment and neglect by the warden, an evil and harmful condition of penal methods.

(x). The labor and industry of the large prisons over-supplied the limited demands of the market, and a vexing problem of finding employment for the inmates of these prisons arose. This lack of employment was experienced at the very beginning of the penitentiary system,²⁴ and resulted in all the states in a large annual deficit until

²¹Ibid., Auburn Prison "is inconveniently located for transportation, as the Erie Canal passes it at the distance of seven miles." (See also Annual Report of Eastern Penit. Pa. 1839, p. 9.

²²Laws of N. Y., Mar. 26, 1796; of Mass., Mar. 13, 1806; of N. Y., Feb. 15, 1798.

²³"Inside Out," p. 135.

²⁴About a year after the opening of the Massachusetts State Prison (i. e., in 1806), the Board of Visitors reported that "the expense had hitherto exceeded all anticipation, and the unceasing exertion of the former Board of Visitors had failed to make any essential diminution. * * * There has at times been a deficiency of suitable work. The directors hope to correct this by contracting

the decade of the twenties, at which time several of the states succeeded in netting a profit from the labor of their convicts.²⁵ In urging employment for prisoners, "productive" work was generally insisted upon, meaning employment from which pecuniary returns could be realized. Consequently the presence or absence of work hinged in a large measure on the question as to whether or not the wares would find a demand on the market. The problem of conducting profitably the prison industry was further affected by the introduction of machine processes into free industry, which forced down the market price and in consequence made the prison industry liable to greater loss because of its inability to keep pace with the advance of industrial processes.²⁶ The search for marketable wares and for employment suited to the needs of the prisoners led to the introduction of a great variety of occupations. The greater the number

with manufacturers and others for the employment of any number of convicts that may be found convenient; and they seriously invite the attention of those who want any quantity of coarse work to be done to reflect on the advantage to themselves and society of engaging it at this institution. [Because of the low expense] of the diet and regimen of a prison, the labor of the convicts can be afforded at comparatively small expense. Many contracts for heavy work and some that required much ingenuity have been performed here to the material advantage of individuals and the state (Appendix, Report of the Board of Visitors of Mass. State Prison, pp. 18-19). The difficulty of securing employment is further shown by an extract from the report of the Prison Commissioners in 1814, which says that "It had been the fond thought that the [prison] labor would pay for all expense," but in that they were disappointed. There was serious discussion of employing the treadmill, but finding that its efficiency in power was very low, the idea was discarded (Haynes' Hist. of Mass. State Prison, pp. 4, 13). The treadmill was being used in New York at that time and the power was applied to the grinding of corn—about one bushel per man per day. In 1824 (cf., Rept. Lab. Comm. 1886, pp. 504-5) the treadmill was used in the Connecticut State Prison for the purpose of grinding corn for prison use, and occasionally for the neighboring inhabitants. These are the only instances discovered of the use of the treadmill in the United States. In New York, likewise, the employment of prisoners was very irregular and unproductive,—sometimes in a pin factory, on public highway, picking oakum, and sometimes unemployed. The site of Sing-Sing prison was chosen in order that the convicts might be employed in the inexhaustible marble quarry on the banks of the North River, thirty miles above New York City (Boston Pris. Disc. Soc. 1827, p. 112).

²⁵The New Hampshire state prison became self-supporting in 1818 (cf., David Dyer Hist. of Albany Penitentiary, pp. 450-451). Mr. Dyer says: "It [was] believed that this [was] the first instance recorded in penal history of convicts supporting themselves." Massachusetts in 1825 netted a profit of ten thousand dollars from the industries in her state prison, under the contract system (Boston Pris. Disc. Soc. 1826, p. 43; 1828, pp. 15-17). Likewise Connecticut, Maryland, New York, and Kentucky netted a profit soon after the introduction of the contract system during the latter part of the decade of the twenties. The state prison of Kentucky and its inmates were leased to an entrepreneur and the profits shared between the state and the lessee, who had the supervision not only of the labor of the prisoners, but of their discipline and maintenance as well.

²⁶Journal of Criminal Law and Criminology, July, 1914, p. 249.

of convicts grouped together in a given locality the greater was the need of diversifying occupations. A second reason for the diversification of industries was the desire to accommodate the crafts to the skill of the prisoners, but it was most generally true that the skill of the convicts was adapted to the occupations that could be most readily applied to the conditions of prison manufactures and that promised the greatest remuneration.²⁷ This scarcity of work with the consequent economic loss and undesirable disciplinary conditions prompted the adoption of various means of securing employment and led to an active competition with free labor and citizen industry and thereby called out severe opposition from mechanics and manufacturers.

(y). This burden of finding employment together with the ordinary penal affairs laid upon the office of the warden very difficult and diversified tasks. The unprofitableness of the public-account system which prevailed during the first quarter of the last century was thought to be due to the fact that this system imposed more duties on the warden than he was able to bear.²⁸ The specialization of industrial processes, both as a producer or manufacturer, and as a merchant seeking a market, augmented the difficulty of managing prison industry, especially in the large institutions, and was a large factor in leading to the adoption of the contract and lease systems whereby the entrepreneur functions were turned over to contractors versed in the various processes.²⁹

²⁷The scattering of industries was condemned by the Boston Prison Discipline Society in its first annual report (1826), because "where there is great variety of employment the expense to the state is much greater than where there is some one simple and useful trade which occupies the time of a majority of the men." Unity of employment was recommended, because greater economy could thereby be effected. But this criticism did not take into account the condition of the market which had prompted such scattering of industries. The trades of coopering, weaving, shoe-making, tailoring, hat-making, and stone-cutting were recommended, because the implements demanded are few and simple, the arts are easily learned, and the skill is in great demand after the prisoners are dismissed. The occupation most to be preferred, "where the material is easily obtained and the market is good, is stone-cutting." The material is cheap and not easily injured, the art is soon learned, is laborious and healthful, requires little superintendence, the tools are few and simple, demand for work is great, and "the business, on the whole, more profitable to the institution and the knowledge of the art very useful to the convict after leaving prison." Likewise, there are but few objections to weaving. "The article is such as cannot be manufactured in the steam loom or by water power, and it therefore pays well for manual labor. * * * The business of shoemakers, hatters, tailors, coopers, etc., though they are not particularly objectionable, have not been found very profitable." (Boston Pris. Disc. Soc. Rept. 1826, p. 15.)

²⁸Boston Pris. Disc. Soc. 1833, p. 76; N. Y. Bu. of Lab. Stat., Part I, 1911, p. 180.

²⁹Haynes' Hist. of Mass. State Prison, p. 242; N. P. A. 1886, p. 222. The financial prosperity and the morals of the prison fluctuated with the ability of the keeper ("Inside Out," p. 22).

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(z). The early state-account system was opposed because the unemployment which was ascribed to it not only involved the prisons in annual deficits, but also entailed undesirable penal conditions. The best reformatory results were held to go hand in hand with the strictest enforcement of discipline under steady and vocationally useful employment; and the method of supervision and control was not held to be of much significance so long as constant labor with its salutary influence was obtainable.³⁰ Hence to escape the penal and economic evils of unemployment the private methods of control were gradually introduced during and following the third decade of the century.

(c). These private methods of control remained the principal means of directing the labor of convicts almost to the present time. It is only within the last few decades that the public has again assumed the more prominent role in the control of prison labor under the state- or public-use system. Under the systems of private control the extent of the supervision by the contractor over the convicts varied from more or less minute restraint and direction in performing the task in the workshop to complete power over the care, housing, discipline and employment of the prisoners. In the contract system the care and discipline of the prisoners are reserved to the warden as his special duty; while in the lease system all these functions are delegated to the lessee. In the piece-price system the power of the contractor extends only to the purchase of the raw material and to selling the finished goods, while the discipline of the prisoners and the supervision of their labor is in the hands of responsible officers and foremen. During the period prior to the Civil War, the contract system predominated, though the lease system was also used somewhat in the Northern states. Following the Civil War the lease system became the most general means of employment in the reconstructed states; but since the decade of the eighties the state-account system has been reintroduced here and there, and the piece-price system has been adopted as a means of reconciling the demands of labor unions and penologists. But the adoption of the state-account and piece-price systems, it was discovered, did not remove the menace of competition nor afford the corrective effects desired. Hence the recent method of state-control and state-use was developed under which the state and its political divisions use the convict labor in construction

³⁰Boston Prison Discipline Society Report 1827, p. 73.

and other public works and apply the products of prison industry to the maintenance of its own institutions without entering the goods upon the price market.

The adoption of the contract and lease systems was prompted by a desire to secure regular and wholesome employment for penological reasons and for greater financial returns. But the separation of the entrepreneur function of the warden from his disciplinary duties was due to industrial, rather than to penological developments. In free industry the factory supplanted the home-shop as the typical unit of employment. "Instead of working by themselves or with a few assistants, men now . . . submit to a new discipline in large groups organized for purposes of production. Along with the new method of production there has been a change from restricted local markets to national, and even world markets."³¹ During the first half of the century the functions of manufacturer and merchant became highly complicated and required a high degree of specialization. The manufacturer must command large capital, and supervise intricate processes of labor performed by the team work of a mass of workers. The merchant "reaches out for wholesale orders. He adds heavy expenses for solicitation and transportation. He adds a storeroom and a larger stock of goods. He holds the stock a longer time, and he gives long and perilous credits at the same time. He meets competitors from other centers of manufacture, and cannot pass along his increased expenses. Consequently the wage-bargain assumes importance, and the employer function comes into the front. Wages are reduced by the merchant as employer on work destined for the wholesale market. The conflict of capital and labor begins."³² Following the middle of the century our industrial processes receive a new impetus; machine processes are made more extensive and more intricate, the market expands still further and a keener competition arises. "The merchant-capitalist intensifies and even creates the antagonism of 'capital and labor.' He does this by forcing the separation of functions and classes a step further than it had been forced in the wholesale-order stage. First he takes away from the retail merchant his wholesale-order business. He buys and sells large quantities; he assembles the cheap products of prison labor, distant localities and sweatshops; he informs himself of markets and beats down the charges for transportation—thus he takes to himself the wholesale business and leaves to the merchant the retail trade. Second, he drives off the employer

³¹R. T. Ely: *Outlines of Economics* (1912), pp. 47-48.

³²*Hist. of Amer. Ind. Soc.*, Vol. 3, p. 39.

function from the retail merchant. The journeyman he hands over to specialists in wage-bargaining.³³ In this growing factory system with its consequent specialization and competition the wardens were unable to hold their own in directing the prison industry, and therefore the states turned over to private manufacturers the labor of the prisoners in lieu of a specified daily or annual fee. This method of controlling the labor of convicts continued in conformity to the industrial exigency until the demands of organized labor and penologists in recent years forced the adoption by state legislatures of a system of applying this labor which removes it from competition with free industry and makes the reformation of the criminal and freedom from menacing competition rather than pecuniary returns, the criterion of the success of the system of employment. Thus, until conscious and purposed control assumed the leading role in dictating policies, the manner of imposing and supervising compulsory penal labor conforms to the manner in which free industry is carried on in the given stage of the industrial development. In the eighteenth century prison labor resembles the handicraft stage of production. The first quarter of the nineteenth century shows the beginnings of the factory method, and of competition between prison and free labor. The last three-quarters of a century shows the relentless drive and specialization of the factory system in the exploitation of convicts under the contract and lease systems in the hands of irresponsible entrepreneurs. These different methods of controlling convict labor fall into the given order of sequence because of the peculiar industrial development of the respective periods.

(2). But the status of the industrial development is significant in determining not only the form of imposing penal labor, but also the nature and the extent of the competition between free citizen labor and convict labor. Prior to the nineteenth century the handicraft and domestic system of production prevailed, and the journeymen and merchant-masters were able to secure a fair return from their labor by setting the price of their wares according to the quality of the material and workmanship, and holding out for this price; that is, by shifting the cost of material and labor to the customer. Profit was not dependent on reducing wages as much as on increasing prices.³⁴ But the nature of competition changed with the introduction of the factory system. The burden of competition shifted from

³³Ibid., pp. 42-44.

³⁴Ibid., p. 39.

the quality of goods to their prices, and the burden of the competition was forced back on the laborer. The merchant-employer seeks the distant market and as he cannot pass on to the consumers the additional cost of reaching this distant market he must reduce wages to keep down the cost. Next the merchant-capitalist intensifies this antagonism by forcing the separation of functions and classes a step further. "He strips the former merchant-master both of his market and his journeymen. The wholesale market he takes to himself; the journeymen he hands over to a specialist in wage-bargaining. This specialist is no longer known as 'master'—he takes the name of 'boss' or employer. His profits are not those of the capitalist, neither do they proceed from his ability as a merchant, since the contract prices he gets are dictated by the merchant-capitalist. His profits come solely out of wages and work. He organizes his workmen in teams with the work subdivided in order to lessen the dependence on skill and increase speed of output. He plays the less skilled against the more skilled, the speedy against the slow, and reduces wages while enhancing exertion. His profits are 'sweated' out of labor, his shop is the 'sweatshop,' he the 'sweater.' The journeyman function is now segregated on two levels of competition, the higher level of custom work and the lower level menaced by prison and sweatshop work. The employer-function, the last to split off, makes its first appearance as a separate factor on the lowest level of market competition. Evidently the wide extension of the market in the hands of the merchant-capitalist is a cataclysm in the position of the journeyman. By desperate effort of organization he struggles to raise himself back to his original level. His merchant-employers sympathize with him and endeavor to pass over to their customers his just demand for a higher wage. But they soon are crushed between the level of prices and level of wages. From the position of a merchants' association striving to hold up prices they shift to that of an employers' association endeavoring to keep down wages."³⁵

By this expansion of the market, division of functions, and development of team work and machine processes a separation of classes and of interest arises. Competition occurs between mechanics or between laborers of the same class. But especially is the low-level competition a menace to higher-level workmen as a possible and real source

³⁵Ibid., p. 42 ff.

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of under-bidding wages and prices. This fact is described by Professor Commons in the following manner:

“Defining the ‘marginal producer’ as the one with the lowest standard of living and prices and quality of work, he is the producer whose competition tends to drag down the level of others toward his own. It is not necessary that he be able actually to supply the whole market or even the greater part of it. His effect on others depends on the extent to which he can be used as a club to intimidate others against standing out for their side of the bargain. He is a menace rather than an actual competitor. Now, the extension of the market for the sale of goods is accompanied by an extension of the field for the production of goods. This extension brings into the competitive area new competitors who are essentially a series of low marginal producers. The capitalist who can reach out for these low-level producers can use them at will to break down the spirit of resistance of high-level producers. In the custom order stage there was but one competitive menace, the shoemaker who made ‘bad wares.’³⁶ In the retail shop stage there is added the ‘advertiser,’ the ‘public market’ and the auction system. In the wholesale-order stage there is added the foreign producer, and in the wholesale-speculative stage the labor of convicts and sweatshops. Thus the extension of the field of production increases the variety and discovers lower levels of marginal producers, and the merchant-capitalist emerges as the generalissimo menacing in turn every part of the field from his strategic center.”³⁷

The role of convict labor as one of the sources of low-plane competition is to afford a menace to the higher-level citizen laborer. During the colonial period there is no evidence of this detrimental competition, but in the early part of the nineteenth century such a menace shows itself in the endeavor of the wardens to find employment for the inmates of the state prisons. Both the industrial factors creating competition as described in the foregoing paragraphs and the abnormally large force of convict labor concentrated in the penitentiaries contributed to this competition. As early as 1806 the scarcity of work among the prisoners led the overseers of the Massachusetts State prison to offer the labor of the convicts at greatly reduced wages because the cost of maintenance was very low. This fact of the low cost of subsistence of convicts under any system of employment together

³⁶Dr. Commons, in describing the history of the journeymen cordwainers, but he says that this development epitomizes the development in the entire industrial revolution.

³⁷Ibid., p. 48.

with the fact that this labor is subsidized and may hence be let out for more or less than the cost of such subsistence is the course of the evil arising from the entrance of convict labor on the competitive market. "In dull times the prison produces as before; its goods accumulate and must be gotten rid of. In good times when labor is scarce and the demand for goods is brisk, the independent manufacturer must pay high wages and cannot afford to compete with the prison industry which pays no wages, tax or rent. Though the amount of prison-made goods is relatively small, it affects the price of other goods regardless of the quantity. One thousand pairs of shoes offered in the market will affect the price of one million pairs of other shoes for a year or more. If the amount of prison-made goods were not limited and could be produced in any desired quantity, they would monopolize the output and destroy the business of all competitors."³⁸ The underbidding of the market was resorted to in the beginning of our penitentiary system and has continued to the present time under all systems of employment excepting the recent public-use system.

The evils of competition have been usually ascribed by citizen mechanics to the system in use at any given time and place. Under the early state account system it was thought the underbidding of the market was due to the fact that the state could lead the market, and it was supposed that free competition in bidding for the labor of convicts would remove the menace. When the contract and lease systems were introduced the underbidding continued. The menace was then ascribed to the greed of the contractor who by reason of the low rates paid for prison labor and the exploitation of the convicts was enabled to undersell the general market.³⁹ But the competitive menace continued under the state-account and piece-price systems which were reintroduced in the latter part of the last century. When in the decades of the seventies and eighties the pressure by labor organizations against the then existing contract system was most severe, prison officials declared that convict labor, because of its relatively small amount, produced no appreciable affect on free labor. The public officials were of the opinion that the care with which contracts are made and production and selling supervised is of more importance in competition than the system employed.⁴⁰ Both labor leaders and pub-

³⁸N. P. A., 1707, p. 135.

³⁹Hist. Eastern Penit. Pa., p. 53; Ann. Rept. Boston Pris. Disc. Soc. 1833, p. 75; Hist. Amer. Ind. Soc., Vol. 5, p. 53, ff.

⁴⁰N. P. A. Rept. 1887, p. 320; Rept. Comm. of Lab. 1886 (the entire report is devoted to convict labor).

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lic officials failed to see the real cause of the evil arising from the sale of low-cost prison-made wares on the competitive market—the menace of low-plane labor under the factory system of divided functions and interests. The way of escape from this menacing competition was finally sought in the adoption of the public-use system. This system is now being extensively adopted as the outcome of a century of incessant experimenting and legislation.

III. The program of organized effort for the control of convict labor and the abolition of the unfair competition was prompted by two motives—one ethical and the other economic. In a general way, of course, the entire question of competition and the whole range of economic relationship is an ethical problem. But in a more specific way, certain moral abuses arising from the employment of convicts have been protested against by citizen craftsmen and laborers. These moral and economic motives and interest have given direction to the demands and policies for the restriction of the employment of prison labor and have supplied the incentive for a century of continual agitation. The political activities of labor unionism can then be best observed by an analysis of (1) these motives of action, (2) the demands of citizen mechanics in their endeavor to set bounds to the nature and extent of the menace and displacement arising from the employment of convict labor on marketable wares, and (3) the attainment by legislation in this endeavor to secure freedom from this competition.

(1). The motives of opposition against convict labor have arisen from two sources; namely (a) the moral abuses, and (b) the economic loss incurred by this menacing competition and by the displacement of free labor by prison labor.

(a). The matter of unequal competition has always been looked upon by citizen mechanics as unfair and hence as morally wrong. But other more specific moral abuses were most emphatically condemned. Thus, for example, it was protested that “the government grossly abuses its trust and inflicts incalculable injury on society when it permits prison labor to control the results of regular and honest competition and compels the citizen who has always kept his fealty to the state to put his industry below the ordinary standard of reward.⁴¹ In addition to this injury to the means of livelihood a second injustice and moral wrong was early complained of. The permission granted prison-taught and trained mechanics of coming into the ranks of free

⁴¹Doc. Hist. Amer. Ind. Soc., Vol. 6, p. 51.

journeymen was declared to be even more nefarious than the economic evils entailed upon the mechanics by the unfair competition. "The education of felons in the State Prisons in the mechanical arts results in scattering abroad among honest mechanics and mechanics' families and apprentices, a class of degraded men as their associates—thereby poisoning the atmosphere of their workshop, converting them into schools of vice and crime under the tuition of graduates from the State Prison, and bringing disgrace on an honorable class of citizens."⁴² It was also thought that the occupations of mechanics were degraded in public estimation by the use of their trades in prisons.⁴³ During the entire period of our penitentiary system it has been held by many citizens that the "hard-working and honest mechanic is insulted by having felons put on an equal footing with him. The rank of his trade are not filled with reputable and worthy men like himself, but with the outpourings of the penitentiaries."⁴⁴

Although these moral objections are still raised against these abuses in the employment of convicts, there is more willingness on the part of the laborers to give the ex-convict a chance to make good in his vocation, and more concrete content has been embodied in the ethical agitation. Thus in the report of the proceedings of the American Federation of Labor for 1901, it is declared that "The present system of employing convicts . . . is a wrong to the convicts themselves, making the name of the reform schools and penal institutions a misnomer, inasmuch as the inmates of such institutions, instead of being taught some trade are under the present contract system of employment further debased."⁴⁵ While citizen mechanics today still resent working with an ex-convict, officially and, no doubt, among increasing numbers of individuals, the right to an occupation is granted the former offender against society, and protection is afforded him against the cupidity of contractors of prison labor. The solidarity of labor is acknowledged in opposition to the interests of the capitalist and employer.

(b). In addition to these moral objections the economic evils of competition prompted the opposition of labor unions against specific conditions of the employment of convicts. "This competition showed itself as a drag when the movement for higher wages began," and

⁴²Ibid., Vol. 8, p. 322.

⁴³Bu. of N. Y. Lab. Stat., Part I, 1911, p. 177, ff.

⁴⁴N. P. A. Rept. 1886, p. 248.

⁴⁵Rept. Proceedings A. F. D. 1901, p. 194.

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organized labor at once formulated the issue which it has insistently pressed for three-quarters of a century."⁴⁶ Even as early as the second decade of the last century the economic loss to free mechanics called out public disfavor against the employment of convicts on mechanical arts. In 1816 public prejudice deterred citizens from entering into contract for prison labor.⁴⁷ In 1823 the mechanics protested in the columns of the *New York Mechanics' Gazette*, against the employment of convicts in the mechanical occupations and voiced their apprehension that free laborers in the threatened trades would be displaced by the convict labor. The employment of convicts, it was stated, "created dissatisfaction in the minds of all whose business happened to be introduced into the prisons."⁴⁸ In 1825 the New York State Prison, then located in New York City, was removed to "Mount Pleasant" (now Sing Sing), by an act of the legislature, mainly because of the "demand of mechanics that convicts should not be employed upon the manufacture of goods that come in competition" with citizen industry. At the new location of the prison the convicts were employed in an extensive rock quarry.⁴⁹ In 1830 the abuses of displacement of citizen labor and the menace of underbidding the market prices were very emphatically denounced in a journal championing the cause of labor.⁵⁰ In 1834 the New York mechanics condemned officially the "prison monopoly" and petitioned congress to abolish the contract system.⁵¹ Both in New York and Pennsylvania "the excitement on this subject had reached a dangerous height" among the mechanics, but the report of committees appointed to investigate the effect of prison labor upon citizen industry declares that prison-made goods were not sold for less than market prices, that the relative amount of prison labor was insignificant, that no detrimental competition was created, and that no occasion for such unrest existed.⁵²

⁴⁶Doc. Hist. Amer. Ind. Soc., Vol. 5, p. 35.

⁴⁷G. Powers: *A Brief Hist. of N. Y. State Prison*, p. 25.

⁴⁸Doc. Hist. Amer. Ind. Soc., Vol. 5, p. 51.

⁴⁹Inspectors of N. Y. Pris. Rept. 1868, p. 25.

⁵⁰Doc. Hist. Amer. Ind. Soc., Vol. 5, p. 52.

⁵¹N. Y. Bu. of Lab. Stat., Part I, 1911, p. 177, ff.

⁵²Hist. Eastern Penit. Pa., p. 53, ff. The New York Committee reported to the legislature (Bu. of Lab. Stat., Part I, 1911, p. 177, ff.) that the dissatisfaction was due to the contract system and that all occasion for opposition would be removed if the length of the contracts were limited, bidding for prison labor made public and open, and employment applied to articles that are mostly imported. In 1833 a committee reported, condemning not the contract, but the unprofitableness and inhumaneness of the public account system (*Boston Pris. Disc. Soc. Rept. 1833*, p. 75).

But the report of the journeymen cordwainers represents that the prison-made goods were being sold thirty per cent below the established prices. At that reduced rate it was declared, "no regular manufacturer could pretend to sustain himself and pay half wages to his journeymen." Another source of severe resentment was the fact that goods were made in prison forty per cent "below the most reduced journeyman's wages."⁵³ The dread and dislike with which free-mechanics and manufacturers regarded the low-plane competition is further shown by a "memorial" to congress by the master and journeymen cordwainers of the District of Columbia in 1839. This petition to congress represents that the labor of the convicts was let out to a contractor who represented himself to be a manufacturer with establishments in Philadelphia and New York. By the cheapness of this labor he was able to underbid free labor and thereby to "insure to his establishment a great and increasing custom," which threatened to throw the citizen mechanics out of employment, depriving them of their only means of livelihood.⁵⁴

During the time of the rapid growth of the factory system following the Civil War, trades unions came together to consider means of protection "against further encroachment of their means of living by the legislatures and prison authorities of the various states."⁵⁵ The public protests against the moral and economic wrongs became more numerous as the decades went by; and since the federation of labor unions in 1886 not a convention is held during which it is not declared that this competition "is unfair and unjust inasmuch as the product of convict contract labor is sold below the regular market price of the product of free labor,"⁵⁶ and that the policy of conducting prison labor for the profit of contractors or of the state is unjust to the convict and the honest citizen.⁵⁷ The motives of opposi-

⁵³Hist. Amer. Ind. Soc., Vol. 5, p. 51, ff.

⁵⁴Sen. Doc. No. 174, 25th Cong., 3d Sess., Vol. 111. There was sufficient reason for alarm, for 55 of the 74 male convicts of the penitentiary were employed at making shoes, as is shown by the warden's report of 1839. He also states that the boot and shoe department "will not suffer by comparison with the best shops in the country." Other departments were less successful because of the "difficulty of disposing of the articles manufactured."

⁵⁵Proceedings of Convention of Workingmen, 1879-1881.

⁵⁶A. F. of L. Report 1910, p. 230.

⁵⁷Ibid., 1906, p. 25; 1910, Pres. Rept. The attitude of the A. F. of L. can be readily traced in the Reports of Proceedings since 1886. The volumes are well indexed and the discussions and resolutions are easily located.

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tion against the uncontrolled competition of prison labor have, throughout the history of the penitentiary system, been both moral and economic and have grown in intensity as the industrial revolution progressed.

(2). The motives which prompted the program of agitation and opposition against convict labor also determined the nature of the demands proposed in this legislative program. Various restrictions and means of control were early suggested, but they lacked concreteness and effectiveness in attaining the desired end. But as the struggle continued the issue was defined with increasing clearness, and today embodies extensive statutes for setting limits to competition from prison labor. Throughout the entire period the contest centered mainly about the employment of prisoners in mechanical arts and the disposition of the wares of these arts on the competitive market, with the consequent menace to prices and wages in free industry. Several suggestions in the third and fourth decades had considerable merit as means of limiting the severity of competition but they were far in advance of public opinion and were not put into effect for many years; while other proposed devices affected only the apparent cause of competition and did not reach the real source of the evil. For example it was thought that the menace was due to the fact that the state led the market prices, or that the reason for the contractor's underselling the market was due to the absence of free and open competition in bidding for the labor of convicts, or that the evil of the mechanical employment of convict labor lay in the fact of long terms of contract whereby the employer was enabled to make the prison laborers efficient, and that the evil would be removed by limiting the term of contract. To be sure such misapprehensions have been quite prevalent among both mechanics and prison officers till recent years, but the trial of all the systems of employment under private or public control save the state-use system finally demonstrated that the menace in competition was due to the selling on the open market of subsidized and low-plane prison labor.

Other proposals in the first half of the century for the limitation of competition provided that convicts be employed only on occupations not practiced among citizen mechanics or in the manufacture of articles supplied by importation. It was further suggested that prisoners be employed on mechanical arts for government use only, and in construction work on buildings, roads and canals. But all these, it was protested by public officials, would not remedy the cause of competition, and would merely displace other citizen mechanics in

work that belonged to them by the right of citizenship; and it was further objected that the government had neither the organization nor the capital to enter on such projects of public improvement.⁵⁸ Unskilled workmen also objected against being robbed of their work by convict labor. They contended that it was unjust to withhold the mechanical trades from the prisoners and employ them in the non-mechanical occupations.⁵⁹ The same contentions are made even today, but the most satisfactory adjustment so far found, labor unions say, is in the practice followed in the state-use system, which is the best solution outside of the employment of prisoners on public farms and at reclamation work.⁶⁰ There has been a constant effort to restrict the labor of convicts to the less crowded occupations, and it is safe to assume that no adjustment will be reached that meets with complete satisfaction of all citizen mechanics and laborers because locally any employment will displace free labor to a greater or less extent. But the official policy of federated labor concerning the control of convict labor is safe and sane, and will never be likely to urge such restrictions in its imposition as to detract from the use of such labor for the best social ends.

As competition became more severe along with the industrial revolution and as the social consciousness expanded, more concrete measures were suggested and more emphatic demands made for the restriction of the menace of convict labor. These demands related both to the economic and moral evils. The economic demands included such measures as the restriction of the occupations open to convict labor, limiting the hours of employment of prisoners whether employed by the state or by contractors, preventing interstate shipment of prison-made goods, branding all such goods, employing prisoners in the manufacture of wares supplied by importation, forbidding the importation of raw or finished goods upon which convict labor has been bestowed, restricting the use of powerful machinery in prison industry, demanding the use of hand processes so far as possible, limiting the number of prisoners employed in the production of marketable wares, abolishing the contract, lease, piece-price and state-account systems and demanding the adoption of public control and public

⁵⁸Sen. Doc. No. 174, 25th Cong., 3d Sess., Vol. III; Bu. of N. Y. Lab. Stat., Part I, 1911, pp. 177-84.

⁵⁹Hist. of Amer. Ind. Soc., Vol. 8, pp. 223-225.

⁶⁰A. F. of L. 1897, pp. 22, 76.

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use of convict labor.⁶¹ The moral and humanitarian measures were partly linked with the foregoing proposals, and included the extending of protection to the prisoner against exploitation by contractors, i. e., abolishing private control and substituting public control, granting the convict wholesome and instructive employment, granting him or his dependent family a share in the fruit of his labor, limiting the hours of his day's work, making the object of his work reformatory rather than profitable, and granting instruction in elementary education to the corrigible and young offenders.⁶²

In comparing the later moral and economic demands with the earlier ones a decided growth and improvement is seen. New means are sought for the restriction of competition and a new force—the federation of labor—is created to attain the demands. The moral attitude has changed. The resentment against teaching convicts a trade and scattering them among “honest mechanics” has given way to a condemnation of the penal system that fails to reform and to give needed training and instruction in useful trades and elementary education to the corrigible prisoner. The hatred of the criminal has been tempered somewhat with pity for the offender and with a desire to protect him against an avaricious or thoughtless contractor or lessee; reformation and not profit is demanded of the penal institutions. This development of the economic and moral demands of mechanics has been influenced not only by the growing solidarity of interests of the laborers resulting from the industrial expansion, but also by the enlarged social consciousness and socialized philosophy. The moral and political demands of the earlier stage of the development of competition arising from the employment of convict labor were influenced by the transcendental philosophy and idealistic attitude pervading our political and social life at that time. But this higher idealism has given way to a lower idealism for the amelioration and improvement of social conditions by concrete and, perhaps, commonplace remedies by legislation and social control. This new political philoso-

⁶¹A. F. of L. 1890, p. 36; 1897, pp. 22-76; 1898, p. 64; 1909, p. 222; 1899, p. 148; 1901, p. 124; Proceeding of Convention of Workingmen (Orange, N. Y.), 1879; Eaves: Cal. Lab. Leg., p. 30, ff.; Rept. Comm. of Lab. 1886, pp. 572, 586.

⁶²The editor of the International Moulders' Journal thus summarizes the attitude of labor unions: “Briefly reviewed, the trade-union attitude toward prison labor is that its first object should be the prisoner's reformation; that under no circumstances should any element of private profit enter into consideration; that the labor performed by the prisoners should be of a useful nature and that for his labor the convict should be paid, for the benefit of those dependent upon him and for his own assistance upon regaining freedom; and, finally, that the principal object of the state should be to protect itself from the vicious and unfortunate, to give them an adequate opportunity for reformation, but not to derive profit from their labor” (Annals Amer. Acad. Pol. and Soc. Sci. March, 1913, p. 137).

phy is seen in all phases of our social life, and in the control of prison labor, has resulted in the last twenty-five years in extensive legislation for the protection of convicts against the cupidity of contractors and of citizen mechanics against the menace of a low-plane competition.⁶³

(3). These achievements can be traced step by step throughout the history of our factory system. As early as 1823 mechanics of New York declared that they would lend their "suffrage to such only as would pledge themselves to use their best effort to stop"⁶⁴ the evil of displacing free mechanics by convict labor. In 1835 these mechanics urged that prisoners be restricted to their own trade if they have any when they are imprisoned.⁶⁵ Such a law was enacted in 1844, but afforded little or no relief, partly because it was not enforced, and partly because, even when enforced, the menace continued.⁶⁶ The mechanics "resolved" concerning the moral disgrace and economic injury that they would never cease their "exertion against this prime evil till the last vestiges of the statutes which uphold it are totally eradicated from the records of the state."⁶⁷ In 1847 the term of the contract was limited to five years, a consideration that had been urged in 1835.⁶⁸ In Connecticut it was the policy in the forties to manu-

⁶³Following the Civil War, when the menace of low competition was most severe and opposition against contract prison labor was at its height, demands of labor unions were opposed as having little merit and being ungrounded in fact. The statistics gathered by the U. S. Commissioner of Labor in 1886 concerning convict labor had the effect, contrary to justice, of discrediting the arguments advanced by labor organizations. For it was found that the product of prison labor was only .054 of one per cent of the total mechanical product of the country. The total prison population of those institutions in which productive labor was carried on was but one in a thousand of the population of the country, and those engaged in convict labor only one in three hundred of those engaged in free mechanical labor. Prominent prison officials and penologists, who had formerly sided with citizen laborers, now emphatically declared that labor unions were prompted by greed and prejudice. The general opinion expressed in the meetings of the National Prison Congress in 1887 was that no appreciable effect was produced by convict labor upon citizen labor (N. P. A. 1887; 1885, p. 205; 1899, p. 216, ff.; Comm. of Lab. 1886, p. 137, ff.; 5th Ann. Conf. of Charities, p. 166). But "union men, being for years brought constantly and intimately in contact with the economic and social consequences of contract prison labor," persevered in the struggle and won their demands (Annals Amer. Acad. of Pol. and Soc. Sci., March, 1913, p. 10). For a statement of the influence of labor unions on the political parties and their platforms, see *Ibid.* and "Text Book of Labor's Political Demands" (1906).

⁶⁴Doc. Hist. of Amer. Ind. Soc., Vol. 5, p. 51.

⁶⁵N. Y. Bu. of Lab. Stat., Part I, 1911, pp. 180-181.

⁶⁶Doc. Hist., Vol. 8, p. 322.

⁶⁷*Ibid.*

⁶⁸Rept. Comm. of Lab. 1886, p. 576; Bu. of Lab. Stat. of N. Y. Rept. 1911, Part I, p. 180.

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facture only those articles "commonly imported into the United States and which would not come into direct competition with the industries of the state."⁶⁹ The effort to restrict the trades that might be used in prisons was early successful in various states. As craft organizations developed after the Civil War they opposed the use of their trades in prison industry and organizations were effected to combat the evil resulting from the extensive use of their trade in prison manufacture.⁷⁰ In 1878 the hatmakers of New Jersey succeeded, after a protracted struggle, in getting a bill through the legislature prohibiting the manufacture of hats in the Trenton Prison.⁷¹ In 1883 the New York legislature prohibited the manufacture of fur or wool hats in any prison of the state, either under the contract or state-account systems,⁷² and in California the employment of convicts on marketable wares was limited to the manufacture of jute sacks, which industry is not carried on by free labor save among a few Chinamen.⁷³ Protection against fraud and competition was sought by labeling prison-made wares, and several states in 1883 enacted such laws for goods consigned for state, but not for interstate shipment.⁷⁴ Higher contract prices and an eight hour day were advocated as a means of preventing underbidding of the market.⁷⁵

The many minor demands looking toward restriction and control of the competitive menace and the moral abuses affecting both the convict and the citizen laborer were mostly summed up in the opposition against the private methods of control and in the demand for the adoption of public control and use of prison labor. The private method of control prevailed for the greater part of the last century and were not restricted by legislation till the amalgamation and federation of trade unions were affected. The preamble of the Knights of Labor "declared to the world" that one of its aims was "to prohibit the hiring out of convict labor."⁷⁶ The American Federation of Labor likewise opposed with all its energy and relentless hatred the contract and lease systems and through its legislative committees directed the state and national campaigns against these systems of

⁶⁹Amer. Ec. Assn. Pub. Ser. 3, Vol. 8, No. 3, p. 236.

⁷⁰A. F. of L. Rept. 1889, p. 26; 1909, p. 316.

⁷¹Proceedings of Convention of Workingmen, 1879-1881.

⁷²Rept. Comm. of Lab, 1886, p. 578.

⁷³Eaves: Cal. Lab. Leg., p. 262, ff.

⁷⁴A. F. of L., 1909, p. 222; Rept. Comm. of Lab. 1886, pp. 572, 586.

⁷⁵A. F. of L., 1885, p. 17; 1897, p. 76

⁷⁶R. T. Ely Labor Movement in America, p. 87.

private control. Where competition with low-level workers was keenest and where sympathy (and the labor vote) was strongest, the restrictions were achieved earliest. In 1879 California forbade the use of the contract system by constitutional and statutory enactments.⁷⁷ Pennsylvania forbade its use in 1883, New Jersey and New York in 1884, Ohio, Illinois and Wyoming in 1886, Massachusetts and the Federal Government in 1887. In 1867 the contract and lease systems were the prevailing method of employment throughout the country, the state-account system being in use in only three prisons in the Union, but in 1899 the contract system was forbidden by eighteen states and territories, including the District of Columbia. In 1905 twenty-eight states restricted the use of the contract after the expiration of the then existing agreements, and in 1911 the last vestige of the employment of convicts under the contract system had disappeared from twenty-six states, and was in partial use along with systems of public control in sixteen states, but remained the exclusive means of employment in only three states.⁷⁸

Although the contract system was abolished and the state-account and piece-price systems were employed, competition continued unchecked, and a movement began for the adoption of a method of employing prisoners whereby the products of their labor should be withheld from the competitive market and used by the state and its political divisions on public works and in the manufacture of articles for public institutions. This is known as the state- or public-use system. This manner of employment has been agitated ever since 1835, and is within the last few years coming to be the most conspicuous method of employing those sentenced to compulsory penal labor.⁷⁹ But even this method is not altogether satisfactory to citizen laborers and mechanics "because it reserves for convicts much of the work of the state and its political divisions that rightfully belongs to the free laborer."⁸⁰ But it is held by labor unionism to be the best method of employment yet devised and is, in the main, meeting with satisfaction because of its moral provisions and its relative freedom from a harmful competitive menace. Citizen mechanics urge that convicts be engaged on public land, in gardening and at other public outdoor work,⁸¹ and

⁷⁷Eaves: Cal. Tabl. Leg., p. 362.

⁷⁸Jour. of Criminal Law and Criminology, July, 1914, pp. 255-260.

⁷⁹Ibid, p. 261, ff., and N. Y. Bu. of Lab. Stat., Part I, 1911, p. 180.

⁸⁰A. F. of L., 1897, p. 76, ff.

⁸¹Ibid.

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such forms of labor are being generally employed by the various states of the Union.⁸²

The adoption of these recent methods of employing convicts is the outcome of a century of endeavor of citizen mechanics to secure freedom from the menacing competition of prison labor. This competition was brought on (1) by the development of our penitentiary system whereby compulsory labor was made a means of punishment and reformation, thus creating a large potential supply of prison labor and whereby convicts sentenced to such labor were concentrated in relatively few occupations within narrow markets, and (2) by the development of the factory method of production which resulted in the division of classes and functions, shifted the burden of competition to the laborer and made low-plane producers a menace to the standard of living of the higher-plane workman. Convict labor is such a menace in competition and is objectionable on moral and economic grounds. To remedy these evils labor unions have striven for various restrictive and regulative measures and have turned to political activities to obtain their demands. By this political program, legislation has been effected abolishing the systems of private control and adopting public control and, in an increasing measure, public use, of convict labor. By this triumph of social control, the prisoner is protected against exploitation and the citizen mechanic against unequal and unfair competition.

⁸²Jour. of Criminal Law and Criminology, July, 1914, p. 266.