

1922

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Recommended Citation

Elmer Barnes, Harry, Progress of American Penology as Exemplified by the Experience of the State of Pennsylvania 1830-1920, 13 J. Am. Inst. Crim. L. & Criminology 170 (May 1922 to February 1923)

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THE PROGRESS OF AMERICAN PENOLOGY AS
EXEMPLIFIED BY THE EXPERIENCE
OF THE STATE OF PENNSYLVANIA,
1830-1920

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I. INTRODUCTORY

In an earlier article in this JOURNAL the writer attempted to set forth the chief phases of the origins of the prison system in this country. Down to 1830 about all the substantial progress which had been made in penology consisted in the substitution of incarceration for corporal punishment as the usual method of punishing those convicted of crime, and in the provision of institutions which would make incarceration physically possible. The major aspects of progress in penological methods have been those achieved since 1830. The state of Pennsylvania is, perhaps, the most interesting field for a study of these advances, not only because of its historic significance as the founder of the modern prison system, but because it presents an unusual combination of the persistence of antiquated penological ideas and practices with at least some appropriation of all phases of penological progress.

The chief advances in penological concepts and practices, by common consent among penologists, are held to be: (1) The commutation of sentence for good behavior; (2) the indeterminate sentence operated in conjunction with a parole system; (3) the differentiation, separation and progressive classification of prisoners in accordance with a study of their personal history prior to commitment and their behavior in confinement; (4) the differentiation of the defective from the delinquent class and a proper specialization in the treatment of the latter; (5) the careful psychological observation and analysis of the delinquent population; (6) the sterilization or permanent segregation of habitual criminals; (7) the religious, moral, academic, vocational and social education of convicts; and (8) the introduction of preventive methods, such as probation, designed to avoid when possible the necessity of the expense and humiliation of imprisonment.^{2a}

¹Professor of History, Clark University, and Historian to the Pennsylvania Commission to Investigate Penal Systems, 1917.

^{2a}In addition to the Pennsylvania documents the writer has found most useful in preparing this section: E. C. Wines, *The State of Prisons and Child-*

II. THE COMMUTATION OF SENTENCE FOR GOOD BEHAVIOR

What is probably the earliest instance of the application of the principle of the commutation of the sentence of a prisoner for good behavior appears in a law passed in 1817 in the state of New York and put into operation in the state prison at Auburn. It provided that all prisoners sentenced for five years or less might earn a reduction of one-fourth of their sentence by good behavior and the performance of a stipulated amount of "overwork." This appears, however, to have been regarded quite as much an economic measure as a disciplinary feature, and it remained purely a local enactment.² It is to the broader development of the principle as an integral factor in the improvement of prison discipline that one must look for the sources from which it came into the practice of the state of Pennsylvania. It is generally held that the first writer to enunciate the doctrine of the commutation of sentence for good behavior as a basic principle in the improvement of prison discipline was Archbishop Whatley of Dublin. In 1829 he published a letter in the *London Review* in which he set forth his belief that the definite time sentence should be replaced by one which represented a certain amount of labor to be performed before release and would allow a convict to reduce his sentence by industrious application to assigned tasks. This suggestion was given a practical application with great success by Captain Alexander Maconochie in his reconstruction of the penal discipline at Norfolk Island, an Australian penal colony, in the years following 1842. When Walter Crofton began his epoch-making work in reorganizing the Irish prisons in 1853 he adopted as a component part of his celebrated "Irish" system of prison administration the so-called "mark" or commutation system of Maconochie. From Ireland it was introduced into America by the enthusiastic admirers of Crofton's methods, among whom were E. C. Wines, Theodore Dwight, Frank Sanborn, Gaylord B. Hubbell and Z. R. Brockway. Though all of the principles of the "Irish" system have since been in differing degree adopted in this country, the principle of commutation was the first element of this system to be intro-

saving Institutions; F. H. Wines, *Punishment and Reformation*; C. R. Henderson, *Penal and Reformatory Institutions*; B. De Quiros, *Modern Theories of Criminality*; J. B. Lindsley, *Prison Discipline and Penal Legislation*; Corinne Bacon, *Prison Reform*; Mary Carpenter, *Reformatory Prison Discipline as Developed by the Rt. Honorable Sir Walter Crofton in the Irish Convict Prisons*; Philip Klein, *Prison Methods in New York State*; E. Stagg Whitin, *The Caged Man*; and Dr. Bernard Glueck's articles on the Psychiatric Clinic at Sing Sing Prison in the *Mental Hygiene Magazine* for 1918. Professor L. N. Robinson's valuable work on *Penology in the United States* appeared too late to be used in the preparation of the manuscript.

²P. Klein, *Prison Methods in New York State*, pp. 406-7.

duced, primarily, no doubt, because it necessitated the least violent and extensive break with traditional administrative methods.

The introduction of the commutation system into the administrative procedure of Pennsylvania was primarily the result of the work of the *Philadelphia Society for the Alleviation of the Miseries of Public Prisons*.³ By their agitation and campaign of education the legislature was induced to pass the act of May 1, 1861, which first established the principle of commutation in Pennsylvania.⁴ This act directed the wardens of the two state penitentiaries to keep an accurate record of all infractions of the disciplinary rules of the institution. In case of no violation of these rules a prisoner was to be entitled to the following reduction of his sentence: one day for the first month; three days for the second month; six days for the third month, and the remainder of the first year; four days for each month in the second year; an additional day for each month from two to ten years; and two additional days above ten years. The wardens were directed to discharge convicts with a certificate of good conduct as soon as they had served out their sentences less the prescribed deductions.⁵

The inspectors of both state penitentiaries violently opposed this commutation act, in part, no doubt, because its peculiarly complicated schedule of reductions would require a large amount of additional administrative labor. In their report for 1861 the inspectors of the Eastern Penitentiary sharply condemned the law, their main objection apparently being the additional labor of compiling the individual records, though it is difficult to see how this could have been a serious objection if the Pennsylvania system was, as its exponents claimed, founded primarily upon a careful attention to individual conduct on the part of the prisoners.⁶ Even more outspoken was the criticism of the inspectors of the Western Penitentiary. They maintained that it would make so much extra work that more officials would be required; that it was unconstitutional to take the pardoning power from the governor in such a manner; and that the inspectors would not execute the law in their institution. They further commended the inspectors of the Eastern Penitentiary for their stand with respect to the law.⁷ The opposition of the prison authorities and the ruffled pride of the

³The name of this society was changed to *The Pennsylvania Prison Society* on its hundredth anniversary in 1887.

⁴*The Journal of Prison Discipline and Philanthropy*, Vol. XVI, October, 1861, Number 4, pp. 170-200. (This reference includes an argument against the system.)

⁵*The Laws of the General Assembly*, 1861, pp. 462-3.

⁶*Report of the Inspectors of the Eastern Penitentiary*, 1861, pp. 36ff, and Appendix, passim.

⁷*Legislative Documents*, 1862, pp. 847-8.

courts were sufficient to procure the declaration by the courts that the commutation law of 1861 was unconstitutional. In their report for 1862 the inspectors of the Western Penitentiary proclaimed their great satisfaction that "the constitution of the Commonwealth had been thus preserved," though their satisfaction could not have been less over the reduction of administrative duties.⁸

The friends of prison reform were not discouraged, however, and persisted in their demand for a commutation law until the act of May 21, 1869, was passed. This directed that the wardens of the penitentiaries keep a record of the conduct of all prisoners and stated that if no charges of misconduct stood against the prisoner he was entitled to a reduction of one month for each of the first two years; two months for the third and fourth year; three months for the fifth to the tenth years; and four months for the period from the tenth year to the time of discharge.⁹ As this law was much more liberal than that of 1869, the delay was not entirely fruitless. By this time the new board of inspectors had come into power in the Western Penitentiary and were from the first advocates and supporters of the second commutation law.¹⁰ The inspectors of the Eastern Penitentiary, while no longer violent in their criticism of the commutation law, belittled its significance. They maintained that it was but an expedient devised by administrators of congregate prisons to lessen the difficulty of maintaining discipline in so defective a system. It was entirely superfluous in so perfect a system as that in operation in the Eastern Penitentiary.¹¹

The act of 1869 remained in force as the basis of the commutation system until the passage of the act of May 11, 1901, which provided—

That every convict confined in any state prison, penitentiary, work house, or county jail in this state, on a conviction of felony or misdemeanor, whether male or female, where the term or terms equal or equals or exceeds one year, exclusive of any term which may be imposed by the court or by the statute as an alternative to the payment of a fine, or term of life imprisonment, may, if the Governor shall so direct, and with the approval of the board of managers, earn for himself or herself a commutation or diminution of his or her sentence, as follows, namely: Two months for the first year, three months for the second year, four months for the third and fourth years, and five months for each subsequent year. And for each fractional part of a year the said convict may earn the same rate of commutation as is provided for in the year in which the said fractional part occurs.¹²

⁸*Report of the Inspectors of the Western Penitentiary, 1862, p. 7.*

⁹*Laws of the General Assembly, 1869, p. 1268.*

¹⁰*Report of the Inspectors of the Western Penitentiary, 1869, pp. 5-6.*

¹¹*Report of the Inspectors of the Eastern Penitentiary, 1870, p. 25.*

¹²*Laws of the General Assembly, 1901, p. 166.*

This act was, thus, considerably more generous in its prescribed reductions than that of 1869. This remained in operation in the state penitentiaries until the acts of May 10, 1909, and June 19, 1911, provided for the introduction of the principle of the indeterminate sentence.¹³ It still continues in force in those institutions, such as the county jails and workhouses, where the indeterminate sentence law has not been introduced.

III. THE INDETERMINATE SENTENCE AND PAROLE

1. *The Indeterminate Sentence*

The principle of commutation discussed above was in one sense a type of indeterminate sentence. It was, however, much too rigid and definite in its provisions to constitute a true indeterminate principle. The first application of the principle of an indeterminate sentence in America, if not in the world, seems to have been in the New York House of Refuge provided by a law of 1824.¹⁴ A very similar condition was introduced into the government of the Philadelphia House of Refuge which was created in 1826. Here the board of managers was given large discretion in the matter of discharging or indenturing inmates.¹⁵ This application of the indeterminate principle was, however, wholly limited to juvenile institutions, and few, if any, reformers possessed any idea that the principle might be beneficially extended to institutions for adult delinquents. As with the practice of commutation, one has to turn to Europe for the origins of the principle of the indeterminate sentence as applied to adult convicts. Archbishop Whatley had certainly anticipated the principle in his letter of 1829. It has been held upon reputable authority that the first comprehensive statement and defense of the theory of the indeterminate sentence was contained in the *Moral Philosophy* of the brilliant if eccentric Scot, George Combe, written about 1835.¹⁶ In 1839 Frederick Hill, inspector of prisons for Scotland, in his report to the secretary of state for home affairs, definitely recommended the introduction of the indeterminate sentence into the prisons of England and Scotland. As far as the writer is aware, it has never been fully determined whether or not Hill obtained the idea of the indeterminate sentence from

¹³Ibid., 1909, pp. 495 ff.; 1911, pp. 1055-9.

¹⁴*Laws of the State of New York*, 1824, pp. 110-12.

¹⁵*Acts of the General Assembly of Pennsylvania*, 1825-6, pp. 133ff.

¹⁶A brief summary of the penal philosophy of Combe is contained in an article on "Early Anticipations of Prison Reform," by O. F. Lewis, in the *Unpartizan Review*, Jan.-March, 1921.

Combe or as the result of his own experience. But whoever may claim the honor of having first presented the principle, it is doubted by no one that its most effective exponent was Matthew Davenport Hill, the brother of Frederick Hill.

Almost from the first it has been agreed that the indeterminate sentence must have as a supplementary principle and practice the system of parole or "ticket-of-leave," as it is known in England. The fundamental value of the parole system in the discharge of prisoners was noted by Jeremy Bentham as early as the close of the eighteenth century. The elaboration of the principle was left, however, to Bonneville De Marsangy of France, who became its great and untiring exponent. The "twin principles" of the indeterminate sentence and parole were combined by Crofton in his Irish prison system and were introduced into American practice in the famous "Elmira system," where they were first applied in the treatment of young and relatively petty offenders, though the Cincinnati Prison Congress of 1870 recommended their immediate application in all state penitentiaries. Though it is generally held that the parole and the indeterminate sentence are a fundamental unity in principle and successful practice, their progress and acceptance in America was more or less uneven. The parole system, being less radical in appearance, as a rule, came earlier, entering the state prisons of this country rather generally in the decade of the "nineties." The indeterminate sentence found no widespread welcome until about 1910, when a campaign for its introduction was waged by the enlightened jurists of the country and by the *American Institute of Criminology and Criminal Law*. At the present time over half of the states have adopted the indeterminate sentence and still more the parole system.

Before taking up the subject of the formal adoption of an indeterminate sentence law in Pennsylvania, it will be interesting briefly to refer to a type of extra-legal indeterminate sentence which prevailed in the state penitentiaries during the middle of the last century, namely, the practice of wholesale pardoning. As early as 1835 the inspectors of the Eastern Penitentiary complained of the excessive use of the pardoning power by the governor and urged that this right should be used only in cases of clearly established innocence.¹⁷ In their report for 1864 the inspectors presented the summary statistics for the use of the pardoning power in that institution. Since the opening of the institution two thousand and eighty-two convicts had been admitted

¹⁷*Report of the Inspectors of the Eastern Penitentiary, 1835, Senate Journal, 1835-6, Vol. II, p. 323.*

and no less than four hundred and sixty-three had been pardoned by the governor.¹⁸ In 1867 the inspectors of the same institution stated that this abuse of the pardoning power constituted the most serious obstacle to an effective system of discipline.¹⁹ To how great an extent the inordinate amount of pardoning revealed by these statistics was a result of the importuning of the prisoner and his friends and how far it was the result of the recommendations of the inspectors to prevent physical or mental breakdown in prison, as was charged by Governor Johnston, is a subject for future special investigation. It would seem, then, that a very real, if extra-legal, form of indeterminate sentence existed in Pennsylvania at a very early date, or to put it in another way, that the portion of the sentence actually served was determined, as the inspectors of the Western Penitentiary expressed it, "by the amount of money and the number of friends available to press the suit for a pardon."²⁰

Aside from the above-mentioned use of an approximately indeterminate sentence in the House of Refuge following 1826, the first introduction of the principle of the indeterminate sentence in Pennsylvania was contained in the act of April 28, 1887, organizing the government of the Huntingdon Reformatory. This provided a very close approach to the true indeterminate sentence; the only time specification allowed in the sentence was that it could not exceed the maximum prescribed for the crime in the penal code of the state.²¹ More than twenty years passed before this principle was extended to the state penitentiaries, in even a temporary and imperfect manner. The interesting steps which led up to the passage of the law of 1909 introducing the indeterminate sentence in the Pennsylvania penitentiaries, as well as an enumeration of the different individuals and societies instrumental in securing this important reform measure, are well set forth in the following memorandum furnished the writer by Dr. J. F. Ohl, who has for the last fifteen years been an indefatigable worker in the cause of prison reform in Pennsylvania:

In 1904 the *Pennsylvania Prison Society* appointed a standing committee on legislation of which the Rev. Dr. J. F. Ohl has from the beginning been the chairman. Sometime between 1904 and 1907 Judge William H. Staake called the attention of Dr. Ohl to the desirability of making the acquaintance of General St. Clair A. Mulholland, then an inspector of the Philadelphia County prisons, with advanced ideas on penal subjects, and gave him a letter of introduction to the general. Dr. Ohl and General

¹⁸*Report of the Inspectors of the Western Penitentiary*, 1864, p. 7.

¹⁹*Ibid.*, 1867, pp. 5, 37.

²⁰*Report of the Inspectors of the Western Penitentiary*, 1867, pp. 5, 37.

²¹*Laws of the General Assembly*, 1887, p. 65.

Mulholland at once found that their views on the necessity of many reforms were identical and began to gather information as to methods, experiences and results from every possible source. They carried on an extensive correspondence with governors, attorney generals, penitentiary wardens, and other persons interested in prison reform in all the states in which progressive legislation had been enacted and tried. Further, until the general's death in February, 1910, they made a number of trips to Harrisburg to argue bills before the proper committees. The material gathered through correspondence served as a basis for the legislation subsequently proposed, and for a widespread propaganda throughout the state by means of circulars, letters, pamphlets, and leading newspapers.

In 1907, authorized by the *Pennsylvania Prison Society*, Dr. Ohl and General Mulholland succeeded in having a joint resolution introduced in the legislature at Harrisburg providing for the creation of a commission to investigate the condition of the penal, reformatory and correctional institutions of Pennsylvania and to suggest necessary steps in reorganizing the penological concepts and practices of Pennsylvania. This resolution was passed, but was vetoed by Governor Stuart on the ground that there were already too many commissions, that he did not think it wise to add another, and that he deemed it better if those interested in matters of prison reform would come to the legislature with bills of a more specific nature. Thus it came about that members of the *Pennsylvania Prison Society*, the *Protestant Episcopal City Mission*, and the *American Society for Visiting Catholic Prisoners*, together with State Senator Ernest L. Tustin, met at the residence of Mr. John E. Baird, on the evening of April 24, 1908, to discuss what might be done to start penal reform in this state. The meeting was organized by the election of the Rev. J. F. Ohl as chairman, and Gen. Mulholland as secretary. At this meeting it was unanimously resolved to secure, if possible, at the next meeting of the legislature (1909) the enactment of a law providing for adult probation, the indeterminate sentence and parole. At the second meeting of this self-constituted committee, held September 14, 1908, at the residence of James E. Gorman, Esqr., the committee resolved to call itself "The Pennsylvania Society for the Promotion of Improved Penal Legislation," with the officers of the committee respectively as president and secretary. At a subsequent meeting Mr. John E. Baird was made treasurer, who, not wishing to serve, was succeeded by the Rev. R. Heber Barnes. Meanwhile the president and secretary, utilizing to the fullest extent the material they had assembled, prepared the draft of a bill providing for adult probation, the indeterminate sentence and parole, and had the same printed. At a meeting at Mr. Gorman's residence on December 19, 1908, a sub-committee was appointed with B. Frank Clapp, Esqr., as chairman, to take the draft of this bill into consideration and "to perfect it so as to embody these ideas." At this meeting it was also announced that the *Pennsylvania Prison Society* and the *American Society for Visiting Catholic Prisoners* would each contribute fifty dollars toward expenses. The bill as finally perfected, chiefly by Mr. Clapp, was introduced at Harrisburg by Senator Tustin, and became known as the Tustin bill. It was passed, received the Governor's signature May 10, 1909, and went into effect

June 30, 1909. This act was pronounced "admirable" by the Committee on Criminal Law Reform in its report at the Prison Congress of 1910.²²

The following provisions constitute the essentials of the "Tustin Bill" which refer to the matter of the indeterminate sentence.²³ The general policy and procedure of the new law was set forth in the following paragraph:

Whenever any person, convicted in any court of this commonwealth of any crime, shall be sentenced to imprisonment in either the Eastern or Western Penitentiary, the court, instead of pronouncing upon such convict a definite or fixed term of imprisonment, shall pronounce upon such convict a sentence of imprisonment for an indefinite term; stating in such sentence the maximum and minimum limits thereof; fixing as the minimum time of such imprisonment, the term now or hereafter prescribed as the minimum imprisonment for the punishment of such offense; but if there be no minimum time so prescribed, the court shall determine the same, but it shall not exceed one-fourth of the maximum time, and the maximum limit shall be the maximum time now or hereafter prescribed as a penalty for such offense.²⁴

Certain exceptions were made to the universal application of this law. It was stipulated that in cases of third convictions of crimes receiving a penitentiary sentence the maximum penalty imposed in every case should be thirty years. Further, it was stated that the benefits of the commutation law of 1901 should not apply to those sentenced under the new indeterminate sentence law. The necessity of creating a parole system as the indispensable accompaniment of the indeterminate sentence was recognized. It was provided that the boards of inspectors of the two state penitentiaries should meet monthly and examine the records of prisoners who had served their minimum sentence, and, after reviewing their cases, should recommend to the governor of the state that he release on parole such of these prisoners as the inspectors believed would "live and remain at liberty without violating the law." If the inspectors felt that they could not justly recommend the paroling of any prisoner who had served his minimum sentence, they were directed to forward to the governor in writing their reasons for their action. Before the governor could parole²⁵ any prisoner recommended to him by the inspectors as eligible for parole, it was necessary that the case should previously be examined by the board of pardons, com-

²²Adapted and condensed from a manuscript memorandum furnished to the writer by the Rev. Dr. J. F. Ohl.

²³*Laws of the General Assembly, 1909*, pp. 495ff. The provisions of this act relating to probation will be dealt with in another place.

²⁴*Ibid.*, p. 496.

²⁵*Ibid.*, p. 498. The same limitations are placed upon the governor's power to exercise the pardoning power in Pennsylvania.

posed of the lieutenant-governor, the secretary of the commonwealth, the attorney-general and the secretary of internal affairs. If they recommended parole the governor was authorized to order such action.²⁶ It was stipulated that the convict should legally be regarded as on parole to the expiration of the maximum sentence unless earlier pardoned. In case of a violation of the conditions of the parole the convict was to be required to serve out the unexpired maximum sentence unless sooner pardoned or paroled. If a paroled prisoner should be convicted of crime while on parole, it was decreed that he should serve both the new sentence and the remainder of the old maximum without enjoying any privileges of commutation. If, on the other hand, the paroled prisoner gave evidence by his conduct on parole that he had been cured of his criminal propensities, the inspectors might recommend to the governor that the prisoner receive a full pardon. To insure some effective control and supervision of the parole system of each institution the inspectors were directed to appoint one or more parole officers to take charge of the parole machinery of each state penitentiary.

While not a pure indeterminate sentence law, the above statute was one of the most liberal in the history of criminal jurisprudence as applied to a state prison. With its limitation of the minimum to one-fourth of the maximum it made possible the relatively speedy release of the less serious type of convicts or of those who gave evidence of having been reformed by their term of incarceration, while the provision of a maximum of thirty years for all types of recidivists enabled the authorities to retain in confinement for practically a life term that most serious and clearly marked criminal class. Had it been possible to preserve this act for permanent enforcement Pennsylvania might have again attained to something like the pre-eminence she enjoyed in liberal criminal jurisprudence in the latter part of the eighteenth century. The new law, however, was bitterly opposed by the more conservative members of the judiciary of the state²⁷ and was soon emasculated in a way to make its operation much less liberal and effective in all cases, while in some instances it was much more oppressive than the conditions which had existed before the passage of the 1909 act. In 1911 Mr. Edwin M. Abbott, a Philadelphia criminal lawyer and then a member of the legislature introduced an amendment to this act which removed the limitation of the minimum sentence to one-fourth

²⁶This board rarely or never reverses the judgment of the inspectors.

²⁷A number of the more pressive judges, on the other hand, have expressed their emphatic approval of a real indeterminate sentence. See the *Journal of Prison Discipline*, March, 1914, pp. 27-8.

of the maximum and made it possible for the judges to fix the minimum at any point up to one day less than the maximum. The thirty-year maximum for recidivists was also abolished, as well as the provision that the maximum sentence must be the maximum provided in the penal code of the state. The amended bill was passed on June 19²⁸ and its application has caused the practical destruction of the principle of the indeterminate sentence in Pennsylvania since that date. In commenting on the effect of the new law in the *Journal of Prison Discipline*, Dr. J. F. Ohl made the following pertinent observations upon the fatal significance of the amendments:

The act of 1909 was based upon a very careful study of the writings of the most advanced penologists and of the statutes of those progressive states that have introduced the indeterminate sentence and parole with the greatest amount of success. Its viewpoint was that of those who seek the reformation of the wrongdoer, and not of those who still have in their minds the old idea of retributive justice only; it made a break with the old codes, aimed to deal with the man and not with his crime, and had regard to his future rather than to his past. This bill was so amended (in 1911) as virtually to eliminate from it the vital principle underlying the indeterminate sentence and parole. This amendment puts it into the power of the court to fix any minimum below the maximum, instead of a minimum not exceeding one-fourth of the maximum; it permits the court to name a lower maximum than the one now prescribed by law for any given offense; and it strikes out the thirty-year clause altogether. The practical effect of these changes is to destroy in great measure the value and efficiency of the indeterminate sentence as a remedial and reformatory measure. In other words, the amendment restores the vicious inequality of sentences, which is always so apt to breed a feeling of injustice and resentment in the one convicted, and which therefore greatly unfits him as a subject for reformatory treatment. It proceeds upon the long-accepted but false assumption that the court can in every case determine the exact degree of culpability and then adjust the punishment accurately to the crime. This is not only absurd, but it is impossible. As the law now stands, we shall again find, as is indeed already the case, that the same court or adjoining courts may, even under practically identical conditions, impose greatly varying sentences, instead of putting all upon whom sentence is passed on an equality and giving all, under identical conditions, an equal chance, as the law originally contemplated. Again, under the amended law the court virtually determines when a prisoner shall be eligible to parole. This is, however, utterly subversive of the theory upon which the indeterminate sentence is based, namely, *that parole is to be granted when a prisoner is believed to be fit to be restored to society as a law-abiding citizen*. The time when this may be done no court under

²⁸The Laws of the General Assembly, 1911, p. 1055ff.

the sun can fix, but only those who have the prisoner in charge and under observation, and even they may make mistakes.²⁹

The operation of the amended act has not been less vicious than Dr. Ohl predicted. The grossest inequality of sentences for the same crime exist, and in many cases the minimum sentences have been so high that they have compelled a longer term of imprisonment than would have been necessary under the older commutation system. To be sure, some of the more progressive judges have made a wise use of the almost complete discretionary power which was conferred upon them by the act of 1911 and have been most intelligent and liberal in the use of their sentencing powers, and in their case the amendment has operated to improve the penal practice of the state, but with the vast majority of the judges the amendment has led to a gross abuse of this extensive power bestowed upon the judiciary.³⁰ Mr. Albert H. Votaw calls attention to the following examples of the severity of the operation of the "indeterminate sentence" law of 1911:

The court has the power by this law to make the minimum sentence any time at all to within one day of the maximum. A convict whose offense by statute may be punished by an imprisonment of twenty years could have a minimum sentence fixed at any time from one day to nineteen years, eleven months and twenty-nine days. There were four prisoners at the Eastern Penitentiary at the time the last report was made whose maximum was twenty years and whose minimum was the same lacking one day. There were thirty-eight prisoners sentenced to a maximum of twenty years whose minimum was eighteen years or more. According to the old law of commutation for good behavior, every one of these prisoners would have been entitled to freedom on good behavior at the end of twelve years and three months. This law of commutation for satisfactory conduct has been in vogue for fifty years and we have not learned that the judiciary of the state has issued any remonstrance. The number according to the last report whose maximum was twenty years was 86. These under the old law of commutation might be released in 12 years, 3 months. Of these 88, under present law, 55 will remain longer than under commutation. And under present law, 31 may be released earlier than under commutation. It is the inequality of sentences which has produced dissatisfaction.³¹

These instances can be supplemented by many others. Among those received in the Western Penitentiary in 1916 five were given a mini-

²⁹*The Journal of Prison Discipline and Philanthropy*, November, 1911, pp. 21-23. His complete remarks have been somewhat condensed.

³⁰A study of the sentences imposed between 1911 and 1918 seems to indicate that the judges in the western part of the state have exhibited the greatest degree of liberality in applying the law of 1911.

³¹Albert H. Votaw, *Penal Legislation of 1917 in the Commonwealth of Pennsylvania*, p. 18.

num of six and a maximum of eight years; five a minimum of seven and a maximum of ten; three a minimum of ten and a maximum of twelve; five a minimum of ten and a maximum of thirteen; six a minimum of ten and a maximum of fifteen; four a minimum of sixteen and a maximum of twenty; five a minimum of eighteen and a maximum of twenty; and one a minimum of nineteen and a maximum of twenty.³² Even worse abuses of the sentencing power are revealed by the records of the Eastern Penitentiary. In 1917 there were in that institution thirty-one prisoners with a minimum sentence of four years and a maximum of five years; twenty-five with a minimum of five and a maximum of six; forty-two with a minimum of five and a maximum of seven; fifteen with a minimum of six and a maximum of seven; eleven with a minimum of nine and a maximum of ten; fifteen with a minimum of ten years and a maximum of twelve; twenty with a minimum of ten and a maximum of fifteen; fifteen with a minimum of twelve and a maximum of fifteen; fourteen with a minimum of fifteen and a maximum of twenty; thirteen with a minimum of eighteen and a maximum of twenty; thirteen with a minimum of nineteen and a maximum of twenty; eight with a minimum of nineteen years and eleven months and a maximum of twenty years; and one with a minimum of twenty-seven years and a maximum of twenty-eight.³³ Of course, it must be granted that in many cases the minimum should be made as near the maximum sentence as is possible in order to restrain and keep in custody during the longest possible period those dangerous recidivists and degenerate criminals who require and should receive permanent and effective segregation from society during their entire lifetime, but there is little evidence that the cases of extreme minimum sentences were scientifically and systematically applied for this purpose. No machinery as yet exists in Pennsylvania which will enable a sentencing judge to learn with certainty the identity of the habitual criminals. In most cases the extreme minimum sentences seem to have been arbitrarily imposed on account of the heinous nature of the crime itself, or from unusually revolting conditions under which it was committed, or because of the unfavorable impression created by the prisoner in the courtroom.

Realizing that the 1911 amendments had defeated the real purpose and methods of the indeterminate sentence, the advocates of the more progressive penology in Pennsylvania, especially the committee on legislation of the Pennsylvania Prison Society, kept up an enlightened

³²*Biennial Report of the Western Penitentiary*, 1916, pp. 49-50.

³³*Annual Report of the Eastern Penitentiary*, 1917, pp. 54ff.

agitation for the restoration of the 1909 law, and in 1917 was able to secure the passage of an act achieving this desirable end, but this promising accomplishment was destroyed by Governor Brumbaugh, who, with typical opaqueness to modern thought and practice and want of sympathy with the penological progress of the last half century, vetoed the bill.³⁴ The situation at present, therefore, remains as it has since 1911, but there seems little probability that the forces of reaction and obstruction will be able to resist the onward march of penological progress for more than a few years at the longest. Though the principle of the indeterminate sentence has been partially defeated in the state penitentiaries since 1911, it won a victory in another field in 1913. The act of July 25, 1913, providing for the creation of the State Industrial Home for Women, which has since been erected at Muncy, embodied the application of the principle of the indeterminate sentence and parole for all sentenced to the institution. The institution was to receive "any female between sixteen and thirty years of age, upon conviction for, or upon pleading guilty of, the commission of any criminal offense punishable under the laws of the state." The sentence imposed upon such women convicts was to be indeterminate. No minimum was allowed to be specified, while the maximum was to be three years, unless the legal maximum for that crime was more than three years, in which case the legal maximum was to be given. The controlling board was empowered to parole inmates at their discretion and to recommend permanent discharge of inmates to the convicting judges when such action was deemed desirable.³⁵ The principle of the indeterminate sentence, then, in Pennsylvania is fully recognized and applied in the two reformatory institutions and in the two correctional institutions, while in the state penitentiaries it is formally recognized and practically defeated.

2. *Conditional Release and the Parole System*

Though the 1911 amendments to the indeterminate sentence law greatly lessened its usefulness and thwarted some of its chief principles and aims, the system of parole was at least partially saved from the wreckage. Even the parole system was handicapped by the amendment of 1911 which allowed the sentencing judge to fix the minimum sentence. This, as Dr. Ohl pointed out in the preceding passage, has made it possible for the judge rather than the paroling board to deter-

³⁴Albert H. Votaw, *Penal Legislation of 1917 in the Commonwealth of Pennsylvania*, pp. 18-19.

³⁵*Laws of the General Assembly*, 1913, pp. 1311-19.

mine when the prisoner shall be paroled. The minimum sentence, which must expire in all cases before paroling is legally possible, is normally too long for those who deserve to be paroled at all, and too brief for that well defined class who require life-long segregation and confinement. This arbitrary power given to the judges makes it impossible for the paroling board to release a prisoner on parole as soon as his conduct has justified such action; in other words, it abrogates the whole principle of the preparatory phases of the parole system. But within these irritating limitations the parole system has made notable progress in the two state penitentiaries. The following analysis of the parole system in the state penitentiaries will be based upon the practice of the Western Penitentiary, not with any desire to disparage the commendable administration of this department in the Eastern Penitentiary, but because the Western Penitentiary has given more specific attention to the development of this work and has special advantages not possessed by the eastern institution, in that the farm site in Center County makes it possible to give the convicts a transitional period of partial freedom before they receive total freedom on parole.

The parole system was introduced in the Western Penitentiary almost synchronously with the induction of Mr. John Francies as warden, and its development has been one significant aspect of his constructive administrative policy. He was peculiarly fortunate in securing as his chief parole officer, Mr. John M. Eagan, who has combined to an unusual degree real administrative capacity with a sympathetic insight into the aims of the newer penology. Preparatory to organizing their parole department Mr. Francies traveled widely, advising with the leading prison officials and penological experts as to the desirable elements of a successful parole system, and Mr. Eagan made a personal inspection of the more important institutions which had parole systems in operation. After about a decade of developmental experience the parole system at the Western Penitentiary operates essentially as follows:³⁶ A prisoner is eligible for parole at the expiration of his minimum sentence if his conduct and other elements in his past record are such as to justify the parole officer and the inspectors in believing that the convict would live in freedom without violating the conditions of his parole or the laws of the commonwealth. Since the progress of the new institution at Rockview during the last few years has enabled the warden to send a large number of convicts to this site to labor on construction work and on the extensive farms, it has been the practice to send men to the new site some time in advance

³⁶This description is based upon the personal investigation of the writer.

of the expiration of their minimum sentence, so that they may have a preliminary training in partial freedom. Three months before the expiration of his minimum sentence each convict is allowed to apply for release on parole, irrespective of his conduct or his mental and physical condition. Every convict who so applies must also be given a hearing by the parole board, which in both state penitentiaries consists of the board of inspectors of the institution. The action that the board will take on the granting of any particular application from a convict will depend upon his past criminal history, upon the record of the convict while incarcerated, upon his mental and physical condition. This information is furnished to the board by the chief parole officer and by the warden. Unless there are evident reasons why the application for parole should not be granted the inspectors will normally recommend favorable action on the petition. The board does not, however, have power to parole directly, but can only make recommendation on this point to the above-mentioned board of pardons and the governor. If they deem that the application shall not be granted they must submit their reasons for this decision to the board of pardons and the governor, exactly as in the case of recommending positive action. In spite of this complicated formal process of securing action on parole, which requires that the parole board shall recommend action to the board of pardons, which, in turn, is required to advise the governor as to his decision, there has never yet been an instance where either the board of pardons or the governor has reversed the decision of the local parole board.

The duration of actual supervision of a paroled convict and the thoroughness of the inspection of his conduct depends entirely upon the individual convict. If his criminal record is not serious, if his conduct in prison has been commendable, and if his record while on parole has been wholly satisfactory, discharge from parole is likely to be speedy, coming after about eighteen months' time in the most favorable cases. On the other hand, if the convict has had a suspicious criminal past, has exhibited indifferent conduct while in the penitentiary and has given no conclusive demonstration of complete reformation on parole, he will be likely to be retained on parole under more or less active supervision until the expiration of his maximum sentence. In many cases the relatives of the prisoners request that the period of parole and supervision be extended as long as legally possible because it furnishes an additional incentive to good conduct on the part of the convict. While on parole the convict is required to submit reports monthly to the chief parole officer on blanks furnished each month by

the institution. These reports are examined by the chief parole officer and by the head clerk of the prison, and if any personal inspection is deemed necessary they inform the field parole officer who will visit the convict in question. Final discharge comes automatically at the expiration of the maximum sentence, but may come sooner if the paroled convict applies for discharge and the officials deem his request reasonable and sustained by the facts in his case. Normally, however, the initiative in securing the discharge of a deserving paroled convict is taken by the parole officer who makes such a recommendation to the parole board and the same steps are taken and the same administrative machinery is used as in obtaining the original grant of parole. Final discharge restores the convict to the enjoyment of his civil rights as an inhabitant of the state of Pennsylvania, except in cases where the conviction has been for treason or perjury.

The violation of the conditions of parole requires the return of the convict to the institution where he must serve the remainder of his maximum sentence unless sooner reparaoled, discharged or pardoned. In case of the conviction of crime while on parole, the convict must serve out the remainder of the maximum sentence and then the sentence imposed for the crime committed while on parole. The period of partial freedom at the Rockview site is safeguarded by the rather oversevere Pennsylvania penalty for escapes or attempted escapes which condemns a prisoner who has been apprehended after escape to serve double his previous sentence after his apprehension. The office and recording phase of the parole department of the Western Penitentiary approaches perfection in the thoroughness, system and efficiency of its organization, but the parole work is badly handicapped by the lack of a sufficient field force. Only one field officer for visiting paroled prisoners has been provided by the state, though four such officers would find it difficult to care for this work as it should be attended to, there being in 1918 nearly nine hundred men under formal supervision on parole from that institution. This condemns the field supervision to hopeless superficiality and calls for an immediate remedying by the legislature. The need for added field supervisors is equally great in the Eastern Penitentiary where over eight hundred paroled convicts were in 1918 left to the supervision of one man, aided by two office clerical assistants. With the provision of more field workers the parole system in the state penitentiaries would be on a very satisfactory level of working efficiency within the limitations imposed by the illogical and archaic indeterminate sentence law which governs their procedure. To be sure, a truly scientific parole pro-

cedure must be based upon a systematic and scientific classification of prisoners according to their past biological, psychological and sociological history, their mental traits and their behavior while in prison. Attention may now be turned to an investigation of the progress which Pennsylvania has made in this all-important phase of the newer penology.

IV. THE DIFFERENTIATION, SEPARATION AND PROGRESSIVE CLASSIFICATION OF CONVICTS

1. *The Differentiation and Separation of Convicts*

Before there can be any effective and scientific progressive classification of prisoners on the basis of their conduct while incarcerated, it is absolutely essential that some machinery shall be provided for differentiating those convicted of crime into classes which will each have enough uniformity so that a system of grading and promotion will be a fairly accurate reflection of the behavior of the individual convict and will afford some comparable indication of his desire for, and progress towards, reformation. For example, any scheme for grading and advancing convicts on the basis of their conduct, however admirably worked out and standardized, would fail utterly if applied indiscriminately to a group of convicts of every age, both sexes, all grades of criminality and varying degrees of mental abnormality. Class and type differentiation of some general nature, at least, must precede the application of behavior tests which will possess any validity for deciding as to the relative fitness of an individual convict for freedom.

While the advances in this respect in Pennsylvania have been slow and painful and have not as yet attained to anything like relative perfection, the progress has been gratifying when the conditions of the present day are compared with those which existed at the close of the colonial period. At that time criminals convicted of crime, debtors, vagrants and witnesses of all ages, of both sexes, and of all mental and social states and conditions were generally herded promiscuously in one institution. Only in some of the larger and more progressive jails did there exist that elementary differentiation and separation of the accused and witnesses from the others. With the reorganization of the administrative system of the Walnut Street Jail following 1789 there were some very important results achieved in this field of differentiation. Separate rooms and portions of the building were assigned to the accused, the vagrants, the debtors and the convicted criminals. Further, the women were separated from the male pris-

oners and assigned to a particular section of the jail, the debtors were given a separate building, and the worst type of criminals were separated from the lesser offenders and put in the solitary cells in the distinct building erected to contain them. The opening of the Arch Street Jail in the second decade of the nineteenth century provided a separate institution for accused, debtors, and vagrants. With the erection of the state penitentiaries, following 1818, this process was carried still further; not only were these new institutions limited to convicted criminals, but they were also reserved solely for those guilty of the more serious types of delinquency. Up to this time, however, there had been no classification on the basis of age groups, but with the opening of the Philadelphia House of Refuge in 1828 there was provided in a semi-public institution a type of differentiation based upon both age and criminality, the institution being intended for juvenile delinquents not convicted of the major crimes. This separation according to both age and degree of formal criminality was developed further by the establishment of the Western House of Refuge in Allegheny in the middle of the century and by the creation of the two reformatories at Huntingdon and Muncy following 1881 and 1913 respectively. The first and almost the only formal attempt to introduce a system of differentiation and separation on the basis of color came in 1849, when the House of Refuge for Colored Children was opened in Philadelphia. Other institutions have often introduced some separation of white from negro prisoners as an element of administrative procedure, but this has been wholly a voluntary and local practice, lacking any official legal sanction and recognition.

The next departure in point of time was with respect to the differentiation of criminals on the basis of mental states, though in its origins this process was most crude and incomplete. As a result of the work of Dorothea L. Dix, *The Philadelphia Society for Alleviating the Miseries of Public Prisons* and other philanthropic societies and individuals, a state hospital for the insane was established at Harrisburg in the decade following 1840. Though this made no provision for the reception of insane prisoners, except as the result of a difficult process of transfer from the state penitentiaries, it was the initial step in a process which was carried on in the creation of more state hospitals for the insane and in the simplification of the machinery of transfer from penal institutions, culminating in the opening of the state hospital for the criminal insane at Fairview in 1912. The first movement towards providing distinct institutions for the feeble-minded and idiotic came with the establishment, in 1853, of the semi-state institu-

tion, now known as the Pennsylvania Training School for Idiotic and Feeble-Minded Children at Elwyn, in Delaware County. Not until 1897 was there provided a distinct state institution for the feeble-minded and idiotic, that at Polk created by the act of June 3, 1893, and opened four years later. The only attempt to provide a differentiation of convicts on the basis of the degree of criminality has been that mentioned above in the case of the juvenile institutions and the reformatories, where, however, the matter of separation according to age plays as great a part as the consideration of the type of criminal character of the inmates. No system of different institutions has been provided through which convicts may pass in progressive stages on their way to earning absolute freedom, as in the famous Irish system of prison organization. A slight and wholly temporary step in this direction may be detected in the practice of Warden Francis in sending men to the new Rockview site preparatory to release on parole, but when the Riverside prison is abandoned this will no longer be possible. The separation according to sex has been fairly well provided for. In the state penitentiaries the women are confined in a separate building or wing. The reformatories for men and women are wholly distinct institutions. In dealing with the juvenile delinquents the Glen Mills Schools have separate institutions for the boys and girls, while at Morganza the buildings for both sexes are on the same general grounds, but are grouped at a considerable distance from each other. While the process of differentiating the delinquent class into its well-defined types and divisions has, thus, in Pennsylvania only passed through the more rudimentary stages as yet, great progress has been made over the conditions which existed a century ago. This process of separation has at least gone far enough in all but the state penitentiaries, so that a system of progressive classification for each type of prisoners can have some validity as a mode of testing the fitness of the convicts for freedom.

2. *The Classification and Promotion of Convicts*

The term "progressive classification of prisoners" was invented by Sir Walter Crofton, who, in his capacity as organizer of the Irish prisons, after 1853, first perfected a comprehensive plan for conducting a prison system in a manner which would provide for the advancement of prisoners from the stage of solitary confinement to freedom on parole by means of successive promotion in definite classes, the progress being determined by the conduct of the convict. Crofton combined

Maconochie's method³⁷ of determining the conduct of convicts by the "marks" which they earned, with the English procedure of advancing the convicts through three definite stages of confinement. The result was the famous "Irish system" of prison discipline. According to this ingenious and remarkably successful mode of prison administration and discipline the prisoner was gradually advanced from a condition of solitary confinement to parole through stages which permitted a progressively greater degree of freedom, the rapidity of the advancement depending upon the efforts of the convict to demonstrate his progress towards reformation and his willingness to conform to the rules of the system. Frederick H. Wines gives the following excellent summary of the system of progressive classification worked out by Crofton:

The period of cellular incarceration was served at Mountjoy, where there was a prison in two departments, one for men and one for women. The second stage was that of "progressive classification," a phrase of which he was the author. His male prisoners were transferred from Mountjoy to Spike Island, where they were divided into five classes—the probation class, third, second and first classes, and the advanced class. The probation class could be skipped by prisoners who had a good record at Mountjoy. The majority of those transferred were placed in the third class, where they had to earn nine marks per month for six months, or fifty-four marks in all, as the condition of promotion. The number of marks to be earned in the second class was the same, and in the first class, twice as many, so that they could not pass from the first to the advanced class in less than one year. Under the English system, they would then have been entitled to a ticket-of-leave (i. e., parole), but Sir Walter would not grant it until after a test had been applied, in a condition of comparative freedom, at a third prison, called an intermediate prison, at Lusk, where they slept in movable iron huts and were occupied almost precisely as freemen would have been, in farming and manufacturing. The prison at Lusk had neither bars, bolts, nor walls. Its aim was to make practical proof of the prisoner's reformation, his power of self-control, his ability to resist temptation, and to train him for a considerable period—never less than six months—under natural conditions, and so to prepare him for full freedom by the enjoyment of partial freedom as a preliminary step.³⁸

This advanced and enlightened procedure naturally attracted the favorable attention of the leading exponents of prison reform in this country. The publications of the *New York Prison Association* from

³⁷See above, p. 171.

³⁸Wines, *Punishment and Reformation*, p. 190. The women prisoners passed through the same disciplinary system, though at a different institution. For the best brief treatment of the "Irish system" see Mary Carpenter, *Reformatory Prison Discipline as Developed by the Rt. Honorable Sir Walter Crofton in the Irish Convict Prisons*.

1866 to 1870 were in part devoted to expositions of this system and recommendations of its adoption. Gaylord B. Hubbell, the warden of Sing Sing, made a personal investigation of the system and published a favorable report in 1866. In their notable report on the prison systems of the United States and Canada E. C. Wines and Theodore W. Dwight stated in 1867 that they believed the Irish system the best type of prison administration yet devised. In the next year Z. R. Brockway, then of Detroit and later Superintendent of the Elmira Reformatory, strongly urged the introduction of a system of sentencing and treatment similar to that worked out by Crofton. In 1869 New York State passed the bill which led to the establishment of the justly renowned Elmira Reformatory, which first applied in this country in a permanent and effective way the essentials of the Irish system of classification. At the same time that the New York Prison Association was working for the acceptance of the classification system in that state, Mr. Frank B. Sanborn, perhaps the most ardent American advocate of the Crofton system, prepared a detailed report on the Irish system for the board of charities of his own state of Massachusetts and for the New Jersey Commission on Prison Discipline of 1869, while at the epoch-making *Cincinnati Prison Congress* of 1870 he delivered the chief address in favor of bringing the Irish system into the United States. The Congress placed itself upon record as holding it both desirable and possible to apply this system to the prison administration of the United States. Its point of entry, however, came not in its general adoption by the state prisons, but in the reformatories for younger adult offenders guilty of the less heinous crimes, of which the Elmira institution, opened in 1876, was the first and most famous. From its successful operation in these institutions it has made some headway towards a timid and partial reception in a number of state prisons.

As was the case with nearly all of the progressive movements in prison reform in Pennsylvania, the attitude with which the Irish system of classification was received by the controlling authorities of the Eastern and Western Penitentiaries differed widely. The authorities of the Eastern Penitentiary opposed the Irish system from the first, primarily, no doubt, because its introduction would unquestionably have meant the abrogation of the Pennsylvania system of separate confinement and individual treatment. In their report for 1868 the inspectors said on this point:

We feel justified in here suggesting the doubt, that, when the "Irish system" is thoroughly investigated it will maintain the character now

sought to be given to it. Like all novelties or expedients it is highly estimated. Experience will divest it of all its attractions. Just now, it is the newest phase of convict treatment, and most applauded where least understood. It is odd that so much invention is necessary to devise means to sustain the opposition to the Pennsylvania system. At last the philosophy of our penitentiary discipline and the laws essential to its integrity, as a system, must conquer opposition.³⁹

Nor were the Cherry Hill officials any more enthusiastic in regard to the American application of the classification principle at Elmira. In 1883, Warden Cassidy, who had been so vigorous an opponent of the indeterminate sentence and parole,⁴⁰ attended a convention of prison officials at New York City, in which the Elmira system received much attention. Mr. Cassidy maintained that he could arouse little enthusiasm in his own mind for this new type of prison administration. He summed up his reaction to the meeting in the following words:

After hearing so much of herding and grading, congregation and classification, I am the more fully convinced that the individual treatment for people that have to be cared for in prisons for punishment for crime, is the simplest and most philosophical, and is productive of better results.⁴¹

The nineteenth century passed without any semblance of the system of classification in the Eastern Penitentiary. Had Joseph P. Byers remained as warden following 1904, there is little doubt but that he would have established a true system of classifying and promoting prisoners, but his term of office was too short to be able to accomplish this feat. Only during the term of Mr. Robert J. McKenty, who became warden in 1909, has even a rudimentary form of classification been adopted. Mr. McKenty has established a general system of classification whereby convicts are entered in class "B" and may earn their advancement to class "A" by six months of good conduct. They are not eligible to parole at the expiration of their minimum sentence unless they are at that time in class A. Persistent bad conduct or gross violation of the prison rules carries the penalty of reduction to class "C," from which the convicts have to earn their way back into class A. Because of the enforced idleness of the great majority of the convicts, for which the administrative officials are not responsible, this system of classification can have little positive value. No systematic arrangement for grading and promotion can be devised without an adequate industrial organization and the uniform employment of the convicts. Hence, about all that this system of classification and pro-

³⁹*Annual Report of the Eastern Penitentiary*, 1868, p. 80.

⁴⁰See above, p. 172, note.

⁴¹*Annual Report of the Eastern Penitentiary*, 1883, p. 80.

motion can be said to accomplish is the retention for a longer period than the expiration of the minimum sentence of those who have been guilty of serious misconduct. The vast majority pass automatically into the advanced class and their promotion to this class means little or nothing as regards their relative fitness for complete freedom. Nor does this method of promotion afford any real incentive to the prisoner for strenuous efforts for reformation and better conduct. After passing, almost without any positive effort, into the most advanced class he remains there until the expiration of his minimum sentence. Nothing that he can do will hasten his release and only marked and persistent misconduct can lose for him his position. At best, then, this is but a most elementary and essentially negative system, offering little positive inducements for the progressive improvement of the convict. For this condition, however, the officials of the institution are in no sense to be blamed, as they have done the best possible within the limitations imposed by the abominable laws passed since 1883 regulating prison industry and the almost equally to be condemned indeterminate sentence law of 1911.

In the Western Penitentiary the official setting was much better adapted for an open-minded and favorable reception of the system of classification associated with Crofton's methods. A new and more progressive board of inspectors had been appointed in 1864, and in 1866 had made the first significant attack on the Pennsylvania system of separate confinement. Mr. Theodore H. Nevin became president of this board in 1867 and for the next seventeen years held the inspectors in line with the developments in progressive penology. In 1869 there was appointed to the office of chaplain the Rev. John Lynn Milligan, who held that office for exactly forty years, and was during that time the greatest force in the western part of the state in working for the cause of prison reform. He attended most of the national and international prison congresses during his term of office, was thoroughly in sympathy with the newer penology, and his work stands out as comparable in the western part of Pennsylvania to the achievements of the Pennsylvania Prison Society in the east. In the same year Mr. Edward S. Wright was appointed warden and he gave hearty support to all reform proposals which would not be likely to arouse sufficient opposition to threaten his tenure. In such an environment the advanced procedure of classifying prisoners received an enthusiastic reception. The laws of the state would not, of course, permit the complete adoption of the Irish system, but some significant steps were taken to introduce many of its essential principles. In 1870 the

officials of the institution visited the *Cincinnati Prison Congress* and listened to the exposition of the virtues of the method of classifying prisoners.⁴² In their report for 1871 the inspectors stated that a plan had been devised for at least a rudimentary system of classification and promotion according to the conduct of the convicts. It was held to be a combination of the Pennsylvania, Auburn and Irish systems and was described in the following manner:

We are not allied to either of the extremes of separate or congregate government: avoiding the Rock of Scylla on the one hand, as well as the Whirlpool of Charybdis on the other, we have endeavored to select from each that which was good, and by engrafting the one on the other, have, we think, hit upon the correct idea of American prison.

We have introduced three grades of cells:

First, the punishment (not dark) cell, for the incorrigibles, where the prisoner is completely isolated—*severely let alone*—and has nothing to do.

Second, the separate, or Pennsylvania cells (a portion of one wing being appropriated for this purpose), where the occasional insubordinates are placed; they have work and books, but none of other privileges of the institution.

Third, the ordinary cells, where all the well-behaved prisoners are kept, when not at work in the shops or yards.

The idea of *disgrace* incurred and *promotion* secured, is encouraged in this way, and thus far with satisfactory results.⁴³

A further development of this principle of a grading of prisoners on the basis of merit was urged by both the inspectors and Chaplain Milligan in 1872, both stating their warm advocacy of the Irish system.⁴⁴ Some progress in this direction is indicated by the following excerpt from the annual report of the institution for 1873:

The combined system of congregate and separate imprisonment, as recently inaugurated in the management of this penitentiary, has thus far worked to our immediate satisfaction. The convict's prison life is a graded one, his promotion depends entirely upon himself; when he enters the prison he is placed in the first or lowest grade of privileges, in the solitary cell, and then step by step, as he shows himself worthy, he is advanced, until he reaches the highest point of honor and trust in the institution, among which are attendance upon the church and sabbath school services, the day school exercises, the congregate workshop and the coveted benefits of the commutation law. For misbehavior he goes back, on the downward scale, to the place of beginning.⁴⁵

After the classification system had been generally adopted in the Elmira Reformatory its success attracted the attention of the liberal

⁴²*Annual Report of the Western Penitentiary*, 1871, pp. 13, 77-78.

⁴³*Ibid.*, p. 8.

⁴⁴*Ibid.*, 1872, pp. 11-12, 99-101.

⁴⁵*Ibid.*, 1873, p. 6.

authorities of the Western Penitentiary and, as far as legal limitations would permit, they worked over their earlier system of grading into a method of classification consciously modelled after that employed by Mr. Brockway in Elmira. The details of this system were described by Warden Wright in his report for 1889-90. All convicts entered the prison in the so-called "second grade." Six months of good conduct entitled them to advancement to the first grade in which they enjoyed special privileges. They were housed in the larger cells of the new south wing; they were allowed one hour more of light in their cells at night; they were freed from the necessity of marching in lock-step and of wearing the stigmatic prison stripe; and they obtained the benefits of the commutation law. Serious misconduct or gross violation of the prison rules operated to cause the reduction of the prisoner to the third grade, from which he was compelled to work himself back to the first by good conduct. In this third grade even the ordinary privileges enjoyed by those in the entering or second grade were denied to the convict.⁴⁶ This arrangement has been retained with but few changes to the present day. Since the beginning of the work on the Rockview site exceptionally good conduct by the convicts has been rewarded by a transfer to the much more desirable environment of the open country of Center county. This has constituted a most important source of stimulation to better conduct, but it has been offset to some degree by the fact that since the law of 1897 has paralyzed the prison industries, the more or less general idleness at the Riverside site has tended to nullify much of the importance of the system of classification as applied to the convicts retained there.

At least a passing reference should be made here to the progress of the principle of classification in the reformatory and correctional institutions of Pennsylvania. As far as there is any evidence available, nothing indicates that there was any system of progressive classification adopted in the Philadelphia House of Refuge opened in 1828. By 1870 it appears that in the second House of Refuge, erected in Philadelphia between 1850 and 1854, a very crude method of classification had been adopted. Class "A" consisted of the boys under fifteen years of age and Class "B" of those older. A rather naïve attempt was made to make these something after the nature of behavior classes through putting incorrigible boys under fifteen in class B and boys over fifteen with a record of very good conduct in class A.⁴⁷

⁴⁶Ibid., 1889-90, p. 17.

⁴⁷*First Annual Report of the Board of Commissioners of Public Charities of the State of Pennsylvania*, 1871, p. 43.

Two years later it was reported that this system had been displaced by a more extensive and scientific one devised to indicate and stimulate moral improvement.⁴⁸ When the boys were removed to the country site at Glen Mills in 1891 this system of classification was modified by the introduction of the cottage plan of housing and organization, and today practically no form of definite behavior classification exists at Glen Mills. The girls' department, however, which was moved to its country location at Sleighton Farms in 1910, has judiciously combined the cottage system with that of classification on the basis of behavior. Neither the Western House of Refuge at Allegheny nor its successor, the Pennsylvania Training School at Morganza, has ever developed an adequate behavior classification, though the latter has adopted the cottage form of organization and a very liberal form of administrative discipline. The only Pennsylvania institution dealing with delinquents which has made a thorough-going, systematic and effective application of the system of progressive classification of inmates has been the Pennsylvania Industrial Reformatory, which, since its opening in 1889, has operated its disciplinary system according to the Elmira system of progressive classification and promotion. That this method of differentiating inmates will be adopted in the new women's reformatory at Muncy is scarcely to be doubted.

V. THE SEPARATION OF MENTALLY ABNORMAL CONVICTS AND THEIR PSYCHOLOGICAL ANALYSIS AND STUDY UNDER CLINICAL OBSERVATION

In no phase of penology has the progress been greater in the last century than in the growing recognition of the intimate correlation between mental abnormalities and criminal conduct.⁴⁹ This advance has, of course, been primarily a result of the unparalleled progress of psychiatry or medical psychology during this period. As long as insanity was regarded as produced by demoniacal possession, and idiocy was believed to be a divine curse on the individual due to ancestral indiscretions, it was no more possible to entertain a rational conception of abnormal mental states than it was to hold a valid notion of criminality when all types of criminals were indiscriminately viewed as "perverse free moral agents"—the victims of their own self-willed folly. Two influences, which had a somewhat parallel development, tended to destroy this barbarous theological heritage and make pos-

⁴⁸Ibid., 1872, p. xxxii.

⁴⁹See the very authoritative and interesting treatment of this subject in William A. White's *Principles of Mental Hygiene*, Chapter V.

sible the present-day attitude on these questions. Both sprang from the contributions of the English *Deists* and the French *Philosophes* of the seventeenth and eighteenth centuries, who shattered the theological epic that had restrained scientific progress for more than a thousand years, asserted the amenability of man to scientific study and investigation, and declared a healthy confidence in man's inherent decency and worth which was the indispensable preliminary for humanitarian efforts to improve the earthly lot of mankind.⁵⁰ The beginning of a really scientific insight into the nature and problems of insanity is usually associated with the work of the Frenchman, Pinel (1745-1826), and there is no more honorable chapter in the history of medical and social science than the progress of psychiatry from Pinel to Charcot, Janet and Freud. The humanitarian current was continued in the work of reformers, such as John Howard and Elizabeth Fry, and in the multifarious activities of the Quakers in social and penal reform. In the introduction of the humanitarian impulse into the treatment of the insane the name of an American woman, Dorothea Lynde Dix (1802-1887) stands out beyond all others in this country or Europe. To her prodigious labors and untiring devotion to the cause of more rational and humane treatment of this class of unfortunates is mainly due the establishment of hospitals for the insane in the United States during the first half of the last century.

As early as 1835 the inspectors of the Eastern Penitentiary complained of the administrative difficulties caused by the presence of insane convicts. The warden stated that "a minute inspection of the character of the unhappy inmates of prisons, has developed another interesting fact, that many more of them than was supposed are really irresponsible beings." He recommended the provision of a state institution for such individuals.⁵¹ Nothing was done to remedy the situation, and a decade later another vigorous complaint was made regarding the same problem.⁵² That the same conditions existed in the Western Penitentiary is apparent from a protest of its officers in 1845 against the necessity of having to house insane convicts in the institution.⁵³ In the year 1844 Miss Dix made a detailed investigation of the number of insane in the state penitentiaries, the county penal institutions and

⁵⁰A brilliant and sympathetic treatment of the origin of this type of thought is contained in Robinson and Beard's *Development of Modern Europe*, Vol. I, Chapter IX.

⁵¹*Annual Report of the Eastern Penitentiary, 1835, Senate Journal, 1835, II, p. 326.*

⁵²*Annual Report of the Eastern Penitentiary, 1844, p. 23.*

⁵³*Annual Report of the Western Penitentiary, 1845, Senate Journal, 1845, II, pp. 186-7.*

the almshouses, and set forth the amazing but deplorable conditions thereby revealed in a powerful *Memorial* to the state legislature requesting legislative sanction for the erection of a state hospital for the insane in Pennsylvania.⁵⁴ *The Philadelphia Society for Alleviating the Miseries of Public Prisons* ably seconded Miss Dix's plea in a supplementary *Memorial* to the legislature urging immediate action in establishing a state hospital for the insane.⁵⁵ Primarily as a result of these *Memorials*, the legislature passed the act of April 14, 1845, providing for the establishment of the Pennsylvania State Lunatic Hospital at Harrisburg.⁵⁶ This original act, however, made no adequate arrangements for the transfer of insane prisoners from the penitentiaries to the hospital for the insane. In 1850 and 1851 the inspectors of the Eastern Penitentiary complained once more of the difficulty of retaining insane prisoners in the institution.⁵⁷ By the provisions of an act of May 4, 1852, it was made possible for the authorities of the Eastern Penitentiary to transfer insane prisoners to the Harrisburg hospital, which had been opened in the previous October.⁵⁸ This privilege was, however, not extended to the Western Penitentiary at this time.⁵⁹ The acts of March 24, 1858, and March 31, 1860, made a partial attempt to remedy this defect, but not until the passage of an act of May 14, 1874, was systematic provision made for the transfer of insane prisoners from both state penitentiaries to the appropriate state hospitals. The significant section of this act reads as follows:

Whenever any person is imprisoned within the commonwealth, convicted of any crime whatever, or charged with any crime and acquitted

⁵⁴*Journal of Prison Discipline and Philanthropy*, Vol. I, Number 3, 1845, pp. 211-5. In January of the same year Miss Dix had submitted a similar "Memorial" to the legislature of New Jersey.

⁵⁵*Ibid.*, Vol. I, Number 2, 1845, pp. 190-99.

⁵⁶*Laws of the General Assembly*, 1845, pp. 440ff; J. H. Fertig and Frank M. Hunter, *A Compilation of the Laws Relating to the Board of Public Charities with Important Provisions of the Laws Relating to the Several State Institutions and the Rules and Regulations of the Committee on Lunacy*, Harrisburg, 1916, pp. 115ff. (This was compiled for the Legislative Reference Bureau.)

⁵⁷*Annual Report of the Eastern Penitentiary*, 1850, p. 28; *Ibid.*, 1851, p. 14. The warden complained in 1851 that the Harrisburg hospital was designed to accept only the curable insane criminals and asserted that he would have to retain the incurables.

⁵⁸*Laws of the General Assembly*, 1852, pp. 524f; Fertig and Hunter, p. 117.

⁵⁹The early provisions for the transfer of criminal insane from the Western Penitentiary were both crude and complicated. The Western Pennsylvania Hospital, a private institution, was incorporated by an act of March 18, 1848, and was allowed to establish an insane department which was opened on January 18, 1853. By an act of March 19, 1856, the institutions took on a semistate character through a provision allowing the state to appoint three members of the board of managers. The new buildings were opened at Dixmont in Allegheny on November 13, 1862. An act of March 24, 1858, allowed the Western Peni-

on the ground of insanity, application in writing may be made by the warden, superintendent, physician or any inspector of the penitentiary or prison in which such person is imprisoned, or by the general agent of the Board of Public Charities, to the court hereinafter named, or any law judge thereof, which application shall certify under oath or affirmation that such prisoner is believed to be insane, and shall request that such prisoner shall be removed to a hospital for the insane; whereupon it shall be lawful for any judge learned in the law of any court within this commonwealth having immediate cognizance of the crime with which such prisoner is charged, or of the court by which such prisoner has been convicted, to appoint a commission of three citizens of this commonwealth, one of whom shall be of the profession of medicine, and one of the profession of the law, whose duty it shall be to inquire into and report the mental condition of such prisoner; and if in a report signed by a majority or all the members of such commission it shall appear that the prisoner inquired of is of unsound mind and unfit for penal discipline, it shall be lawful for the judge issuing such commission, or for any other judge of the same court learned in the law, to make an order under the seal of such court, directing the removal of such prisoner from the place of his or her imprisonment, and that he or she shall be received, maintained and cared for by the hospital for the insane, nearest to such place of imprisonment, and which shall or may receive aid or support from the treasury of the state, and that such patient shall be detained in such hospital, until an order, as hereinafter provided, shall be granted by the said court, or any judge thereof learned in the law, for the return of such prisoner to the penitentiary or prison from which he or she was removed, or for his or her discharge from such hospital: Provided always, That whenever any hospital shall be established especially for the care of insane patients who shall have been convicted of crime, or whenever separate accommodations shall be made for such patients, in any hospital aided from the treasury of the state, the order, as aforesaid, for the removal of any such person from his or her place of imprisonment, shall direct that he or she shall be received, maintained or cared for in such special hospital, or in the separate accommodations of any hospital prepared for such purpose.⁶⁰

Elaborated to some extent by the act of May 8, 1883, this act of 1874 remains to the present day the law governing the transfer of insane convicts from the state penitentiaries to the state hospitals for the insane.⁶¹

Since the establishment of the original hospital for "lunatics" at Harrisburg, Pennsylvania has made provision for a number of similar institutions which can make at least a moderately decent pretention to housing the insane of the state. These additional state hospitals for the

penitentiary to send insane prisoners to this institution, but another act of April 22, 1863, permitted the hospital to return all incurable insane convicts to the penitentiary.

⁶⁰*Laws of the General Assembly, 1874, pp. 160ff; Fertig and Hunter, op. cit., pp. 41.*

⁶¹*Laws of the General Assembly, 1883, pp. 21ff; Fertig and Hunter, pp. 61.*

insane are: The State Hospital for the Insane at Danville in Montour County, established by an act of April 13, 1868, and opened on November 6, 1872;⁶² the State Hospital for the Insane at Warren in Warren county, established by an act of August 14, 1873, and opened on October 6, 1880;⁶³ the State Hospital for the Insane at Norristown in Montgomery county, established by an act of May 5, 1876, and opened on July 12, 1880;⁶⁴ the State Asylum for the Chronic Insane at Wernersville in Berks county established by an act of June 22, 1891, and opened on June 28, 1893;⁶⁵ the Homeopathic State Hospital at Allentown in Lehigh county, established by an act of July 18, 1901, and opened on October 3, 1912;⁶⁶ and the Western State Hospital for the Insane established by an act of July 18, 1915, and now in the process of construction at Blairsville Intersection in Westmoreland county.⁶⁷ After a half century of delay there has at last been provided a distinct state hospital for the criminal insane; this was established by an act of May 11, 1905, and was opened in a partially completed condition at Fairview in Wayne county on December 17, 1912.⁶⁸ To this institution may be sent the criminal insane from all parts of the state and from all state penal institutions. In addition to the above institutions of a public nature caring for the insane, there is the semi-state institution at Dixmont in Allegheny county. This existed down to July, 1907, as the insane department of the Western Pennsylvania Hospital of Pittsburgh, the partial state control dating from an act of March 19, 1856. By a judicial decree of July, 1907, it was made a distinct institution known as the Dixmont Hospital for the Insane.⁶⁹

Nothing like as complete provision has been made for the care of the allied class of idiotic and feeble-minded, which is a much more numerous and, on the whole, a more dangerous class than the insane.⁷⁰ The first step in this direction was taken by an act of April 7, 1853, which incorporated what is now known as the Pennsylvania Training

⁶²*Laws of the General Assembly*, 1868, pp. 90ff; Fertig and Hunter, pp. 123.

⁶³*Laws of the General Assembly*, 1873, pp. 333ff; Fertig and Hunter, pp. 124ff.

⁶⁴*Laws of the General Assembly*, 1876, pp. 121ff; Fertig and Hunter, pp. 126-7.

⁶⁵*Laws of the General Assembly*, 1891, pp. 379ff; Fertig and Hunter, pp. 127-9.

⁶⁶*Laws of the General Assembly*, 1901, pp. 130ff; Fertig and Hunter, pp. 129-30.

⁶⁷*Laws of the General Assembly*, 1915, pp. 1055ff; Fertig and Hunter, pp. 132-3.

⁶⁸*Laws of the General Assembly*, 1905, pp. 400ff; Fertig and Hunter, pp. 131-2.

⁶⁹*Laws of the General Assembly*, 1856, pp. 135ff; Fertig and Hunter, pp. 163ff.

⁷⁰See on this subject, H. H. Goddard, *The Criminal Imbecile*.

School for Idiotic and Feeble-minded Children at Elwyn in Delaware county.⁷¹ Like the Philadelphia House of Refuge, this originated and has remained a semi-private institution. The first state institution of this type created in Pennsylvania was the State Institution for the Feeble-minded of Western Pennsylvania at Polk in Venango county, established by an act of June 3, 1893, and opened April 21, 1897.⁷² Two others have since been provided, the Eastern Pennsylvania State Institution for the Feeble-minded and Epileptic at Spring City in Chester county, established by an act of May 15, 1903, and still uncompleted, though it has been opened for the reception of patients;⁷³ and the Pennsylvania Village for Feeble-minded Women at Laurelton in Union county, established by an act of July 25, 1913, and scarcely more than in the initial stages of construction at present.⁷⁴

In recent years the progress in abnormal psychology has definitely demonstrated that chronic inebriety is but a form of psychic instability and aberration rather than a special and obstinate form of voluntary perverseness. In accordance with the recognition of the significance of this undoubted fact, the legislature passed an act on July 25, 1913, authorizing the establishment of a state institution for inebriates, but, unfortunately, little has been done to carry out this laudable intention.⁷⁵

While no one would deny enthusiastic support to the movement for a better and more thorough care of the more grossly mentally abnormal types, such as the insane and the idiotic and epileptic, it is coming to be generally recognized that this is but the feeble beginning of the desirable application of medical psychology to the solution of the problems of penal administration. To remove from the prison the violently insane is but to prepare the way for the examination of the psychic characteristics of those who remain and may be suffering from less obvious mental and nervous disorders. Though it is impossible to deny a considerable weight to the economic and social factors in the causation of crime⁷⁶ it has now come to be generally recognized that, to a hitherto wholly unsuspected degree, crime is the product of mental abnormality and instability. Even those convicts whose criminality seems traceable to adverse economic status or unfavorable social environment normally fall into these strata or circumstances which invite crime because of mental defects which prevent them from mak-

⁷¹*Laws of the General Assembly*, 1853, pp. 341ff.

⁷²*Laws of the General Assembly*, 1893, pp. 289ff; Fertig and Hunter, *op. cit.*, pp. 133ff.

⁷³*Laws of the General Assembly*, 1903, pp. 446ff; Fertig and Hunter, pp. 136f.

⁷⁴*Laws of the General Assembly*, 1913, pp. 1319; Fertig and Hunter, pp. 140ff.

⁷⁵*Laws of the General Assembly*, 1913, pp. 1306; Fertig and Hunter, pp. 143-4.

⁷⁶*Cf. W. A. Bonger, Criminality and Economic Conditions.*

ing a normal adjustment to the problems of existence. Dr. William A. White, one of the most eminent of living psychiatrists, has thus summarized the very significant prevalence of mental and nervous defects in the convict population:

A considerable proportion of the prison population are not normal in their developmental possibilities. Upwards of fifty per cent, as they admitted, have demonstrable disease at the central nervous system level. That is, they are mentally defective, psychotic, or have gross central nervous system diseases such as arteriosclerosis or syphilis. This does not include bodily diseases other than those of the central nervous system.⁷⁷

This estimate given by Dr. White is not only conservative, but is based on fairly concrete and scientific evidence which is continually being confirmed by every investigation in this field. Dr. William Healy, by his close personal study of delinquency in Chicago and Boston, particularly among juveniles, has found a close correlation between psychic aberration and criminal behavior.⁷⁸ Perhaps the most thorough and convincing study which has been made in this field has been carried on in the psychopathic clinic opened at Sing Sing Prison in New York state in August, 1916, under the direction of Dr. Bernard Glueck. A careful investigation of the psychic state of 608 convicts consecutively admitted revealed the significant fact that 359, or 59 per cent were so obviously abnormal in mentality as to be readily detected, while there was reason to believe that a more extended analysis of the remaining 41 per cent would have demonstrated many of them to be mentally unstable.⁷⁹

Another simultaneous investigation was carried on by Dr. A. L. Jacoby at the United States Naval Prison at Portsmouth, New Hampshire, following November 1, 1917. After a careful and exceedingly comprehensive examination of the court-martialed sailors sent to the prison, Dr. Jacoby arrived at the conclusion that 54 per cent were suffering from serious mental or nervous disorders which should have been detected at the time of enlistment, and that an additional 12 per cent had developed mental or nervous disease subsequent to their entry into the naval service. In other words, at least two-thirds of these naval prisoners were distinctly abnormal, mentally or nervously, and one-third of this abnormal group was of distinctly subnormal men-

⁷⁷W. A. White, *The Principles of Mental Hygiene*, p. 143. See also Thomas W. Solmon, in *Mental Hygiene*, January, 1920; pp. 29-42, and bibliography appended.

⁷⁸William Healy, *Mental Conflicts and Misconduct*, and *Pathological Lying, Accusation and Swindling*.

⁷⁹Bernard Glueck, in *Mental Hygiene*, January, 1918, pp. 85-151; April, 1918, pp. 177-216; October, 1918, pp. 546-56.

tality. These statistics are of particular significance as being based upon the examination of a special class of prisoners drawn from what would be theoretically at least a select group from which the unhealthy or inferior individuals had been eliminated by severe tests at the time of enlistment.⁸⁰

In the matter of providing for this more advanced and scientific entry of psychiatry into the solution of the problems of successfully dealing with the criminal class, Pennsylvania has not made any progress comparable to that achieved in the erection of hospitals for the insane and in making it possible to transfer the insane convicts to these institutions. In this respect, however, Pennsylvania is not different from most of the other commonwealths of the United States. There has been little or nothing done to make a psychiatric clinic a part of the administrative mechanism of the penal institutions of the country. Even that at Sing Sing was merely tolerated by the state of New York while being supported by a private foundation for scientific research.⁸¹ Attempts to introduce this indispensable element into penological practice has normally done little more than to furnish the occasion for coarse and ignorant banter and buffoonery by legislators wholly unacquainted with the essentials of the question at issue.⁸² Though it will doubtless require many years to educate the public as to the vital significance of the careful psychological examination, differentiation and treatment of the inmates of all penal institutions, all the evidence at hand today justifies the assertion that until this innovation is accepted American penology can scarcely be held to have penetrated beyond the most superficial externals of a scientific curative or reformatory treatment of the delinquent class.

Of the six state or semi-state penal, reformatory and correctional institutions in Pennsylvania only one—the Girls' Department of the Glen Mills Schools—has made the slightest attempt to make use of the progress of modern psychology in the study and treatment of the inmates of these institutions. Here a psychologist has been added to the staff in order to study the mental conditions of the children committed and

⁸⁰*Mental Hygiene*, January, 1919, pp. 137-141.

⁸¹As far as the writer's knowledge goes only the State of Illinois has created an office of state criminologist in order to make possible the development of a systematic study of the mental traits of convicts.

⁸²A fair sample of the difficulty of obtaining adequate legislative support for this essential department of penological research and procedure was brought out in the recent bill introduced in the Massachusetts legislature to provide for the psychiatric examination of the inmates of the state penal institutions. The discussion on the bill consisted in almost unrelieved buffoonery which culminated in the remark of Senator Cavanaugh that "a psychiatrist is a nut employed to chase another nut." It is needless to remark that the bill was rejected.

suggest the best method of dealing with the various types while at the institution and of fitting them for ultimate freedom.⁸³ It should be noted, however, that some of the more progressive officials of the other institutions have expressed their sympathy with the employment of psychiatry in penal administration and their willingness to make use of this valuable aid to their disciplinary and reformatory system when legislative sanction makes it possible for them to do so.⁸⁴ The gulf which now separates the state penal institutions from an adequate appreciation and utilization of medical psychology is apparent from the statement in the report of the Eastern Penitentiary for 1917 that only 20 out of 572 convicts admitted during the year were mentally abnormal in any degree.⁸⁵ In other words, only a little over 3 per cent were designated as mentally unsound while the investigations of Drs. Glueck and Jacoby have demonstrated that from 50 to 66 per cent are in this condition.

VI. THE STERILIZATION AND SEGREGATION OF THE FEEBLE-MINDED, THE IDIOTIC AND THE HABITUAL CRIMINAL

Owing to the alarming increase of this class and its special menace to the community, much of the best social investigation in recent years has been devoted to a study of the defective and degenerate element in the general population. A number of classic investigations of congenitally defective and degenerate families by Dugdale, Goddard, McCulloch and Blackmar have revealed with a wealth of incontrovertible evidence the disastrous results which attend the promiscuous and unrestricted breeding of defectives and degenerates.⁸⁶ The general dissolution of the theological view of the causation of defective and degenerate personalities and the development of the scientific knowledge regarding the transmission of congenital defects has at last indicated the only possible method of ridding society of this ever increasing degenerate element in society, from which an overwhelming proportion of the paupers, criminals and other social derelicts are recruited. The sole manner of procedure whereby this class can be speedily eliminated before it becomes so large as to drag down the

⁸³*Annual Report of the Glen Mills Schools*, 1916, pp. 50-53.

⁸⁴This attitude was expressed to the writer by Warden Francies of the Western Penitentiary and Superintendent Penn of the Training School at Morganza.

⁸⁵*Annual Report of the Eastern Penitentiary*, 1917, p. 61.

⁸⁶Cf. R. L. Dugdale, *The Jukes*; H. H. Goddard, *The Kallikak Family*; and *The Criminal Imbecile*; F. W. Blackmar, *The Smoky Pilgrims*; O. C. McCulloch, *The Tribe of Ishmael*; P. A. Parsons, *Responsibility for Crime*, chap. v.

normal population in a common destruction is to segregate or sterilize all of its members. The former expedient, while arousing less traditional resistance and opposition, is attended with great expense and the much simpler and more humane method of sterilizing at least those male members of the defective class that can be safely trusted outside of an institution has of late met with great favor among biologists and physicians. If this policy were systematically pursued it would be a conservative prediction to state that in fifty years the defective and degenerate classes would virtually disappear and the criminal class be reduced more than one-half. Most states have begun to make some pretense at custodial segregation of the worst types of the idiotic and the feeble-minded and sixteen⁸⁷ have legalized the sterilization of the hopelessly defective and the habitually criminal, but the law has been applied even partially only in California and Wisconsin. The progress made by Pennsylvania in regard to the segregation of the feeble-minded and idiotic has been summarized in a preceding section, but it will be apparent from this sketch that only the most elementary beginning has been made even in this field of endeavor, as provision is made for the segregation of only a part of the juvenile defectives and almost no arrangement has been made for the proper detection and segregation of the adults belonging to this class. The sterilization of the defectives, degenerates and habitual criminals has never yet received even serious consideration by the legislature and has been but rarely suggested, even by the leaders in prison reform in the state.

VII. THE PROGRESS OF EDUCATIONAL POLICY IN THE STATE PENITENTIARIES

1. *Moral and Religious Instruction*

The provision of moral and religious instruction in the Eastern Penitentiary takes its most remote origin in the beginning of preaching in the Walnut Street Jail as a part of the general reform movement in that institution following 1789. Down to 1838, however, all religious and moral instruction which was given was the work of volunteer clergymen from Philadelphia and neighboring towns and of the visitors from the Philadelphia Society for Alleviating the Miseries of Public Prisons. In 1838 a joint resolution of the legislature authorized the

⁸⁷California, Connecticut, Indiana, Iowa, Kansas, Michigan, Nevada, New Jersey, New York, Washington, Wisconsin, North Dakota, South Dakota, Oregon, Nebraska and Colorado.

appointment of a permanent paid moral instructor. This resolution stated that:

It shall be lawful for the inspectors of the Penitentiary of the Eastern District of Pennsylvania to elect or appoint, as soon after the passage of this resolution as they may deem proper, an officer in the said penitentiary, who shall be called a moral instructor, whose duty it shall be to advise and instruct the prisoners therein confined in their moral and religious obligations, and perform such other services as shall, in the opinion of the said inspectors, appertain to his station, and the said officer shall receive, as a remuneration for his services, a sum not exceeding eight hundred dollars per annum; the said officer to hold his situation during the pleasure of the said inspectors.⁸⁸

The religious services in the Eastern Penitentiary, except for some special exercises in the small improvised chapel recently provided, have always been held in the corridors of the institution. Not until 1913 was it legal for the prisoners to be congregated for any purpose whatever, and this made impossible any general chapel services, even if a structure had been available in which to have the convicts assembled. The unfavorable circumstances under which these sermons were delivered, allowing the convicts to sleep or read during the preaching and preventing them from seeing the preacher or hearing him distinctly, have served to destroy most of whatever value may be held to reside in these religious exercises. In addition to the preaching, other methods of disseminating religious ideas were utilized, especially the distribution of religious literature. In 1846 it was stated that over thirty thousand religious tracts had been distributed to the prisoners.⁸⁹ Bibles were also distributed among the prisoners, as is indicated by the following excerpt from the report of the inspectors for 1885:

A copy of the "Holy Scriptures, which is able to make wise unto salvation," is placed in each cell, and very generally read. Some of the prisoners commit large portions to memory. These sacred writings with other devotional books liberally supplied contain the "good seed sown," even the "bread cast upon the waters which shall be found after many days."⁹⁰

The prison library, established in 1844, was also heavily stocked with religious books, though it seems that great difficulty was met in persuading the prisoners to make an extensive use of this type of literature. In 1853 the moral instructor complained that books were often

⁸⁸*Laws of the General Assembly, 1837-8, p. 690.*

⁸⁹*Annual Report of the Eastern Penitentiary, 1846, p. 71.*

⁹⁰*Ibid., 1885, p. 108.*

given to the prison library which were not "of a strictly religious kind," and stated that this resulted in an alarming decline in the call for religious books; "the religious department of our Library, crowded with unused books, is a standing proof to the reality of this result."⁹¹

There seems little doubt, however, that in spite of all the religious work accomplished by the prison authorities much the most important factor in the religious life of the institution was the visits carried on by the representatives of the *Philadelphia Society for Alleviating the Miseries of Public Prisons*.⁹² From the erection of the Eastern Penitentiary to the present day this society has not only been the chief force in Pennsylvania prison reform, but also the main influence in the spiritual guidance of the prisoners. To this fact the prison authorities have been the first to testify.⁹³ It was stated that in 1862 the visitors from the society had about nine thousand interviews with prisoners, these averaging fifteen minutes in duration.⁹⁴ While there are many honorable names among the members who gave liberally of their time to visiting the convicts, the most indefatigable of all was Mr. John J. Lytle, general secretary of the society from 1887 to 1909.⁹⁵ In recent years these religious conferences with the convicts have also been carried on by representatives of the *American Society for Visiting Catholic Prisoners*, the *Protestant Episcopal City Mission*, the *Salvation Army* and several other religious and benevolent organizations.⁹⁶ The moral instructor has also been aided in conducting religious services by visiting Catholic and Jewish clergymen, who have charge of the religious services for their co-religionists.

The Western Penitentiary was not provided with a moral instructor until a year later than the Eastern institution. In their reports for 1837 and 1838 the inspectors requested the provision of a moral instructor and in 1839 exhorted the legislature to "give us, we beseech you, a moral instructor with adequate compensation."⁹⁷ An act of March 25, 1839, accordingly declared:

It shall be lawful for the inspectors of the Western Penitentiary to elect or appoint, as soon after the passage of this act as they deem proper,

⁹¹Ibid., 1853, p. 36.

⁹²*Annual Report of the Eastern Penitentiary*, 1855, pp. 16, 31-2, 44; Ibid., 1873, p. 192; Ibid., 1890, p. 121; Ibid., 1896, p. 143; Ibid., 1904, p. 12.

⁹³Ibid.

⁹⁴*The Journal of Prison Discipline and Philanthropy*, 1862, pp. 53ff.

⁹⁵Ibid., 1887, p. 27; Ibid., 1911, pp. 69-71; *Annual Report of the Eastern Penitentiary*, 1904, p. 12.

⁹⁶*Annual Report of the Eastern Penitentiary*, 1904, p. 12.

⁹⁷*Annual Report of the Western Penitentiary*, 1837, in *House Journal*, 1836-7, vol. II, p. 411; Ibid., 1838, *Senate Journal*, 1837-8, vol. II, pp. 247ff. Ibid., 1839, *Senate Journal*, 1838-9, vol. II, p. 225.

an officer of the said penitentiary, whose duty it shall be to communicate intellectual and moral instruction to the convicts, in such manner as may be directed by the inspectors, and said officer shall have such sum as may be agreed upon by the inspectors, not to exceed seven hundred dollars, and said officer is to hold his position during the pleasure of the said inspectors.⁹⁸

In their report for 1840 the inspectors stated that they had selected as moral instructor, "Rev. Joseph Banks, whose capacity for the gracious work and unremitting zeal in behalf of the highest interests of the unhappy subjects of his charge, the Inspectors take pleasure in offering their testimony."⁹⁹ The moral instructor himself further stated that there was preaching in each cell-block on Sunday and that he made personal visits to the convicts in their cells.¹⁰⁰ In their next report the inspectors stated that the moral instructor was unable to submit his report on account of illness, but they assured the legislature that "his benign labors have blessed us with some hopeful results."¹⁰¹ In his report for 1846 the moral instructor described his labors in the following manner:

According to the directions given me, I have regularly visited all the prisoners shut up within these walls, passing from cell to cell, in daily connection with them, teaching the ignorant and uneducated the first rudiments of learning and directing the attention of all to the Lamb of God which taketh away the sins of the world. If any fruits unto everlasting life have followed these labors it is because the spirit of God worketh by such instrumentality.¹⁰²

Another phase of the duties of the moral instructor was touched upon in his report for 1850:

Seven prisoners died within the year. They were all visited during the time of their severe illness. Their attention was often and earnestly directed to Jesus Christ, the only Savior. Some of them gave evidence of repentance towards God, and faith in the Lord Jesus Christ, and others seemed to die as the fool dieth.¹⁰³

That the moral instructors capitalized the convicts' incarcerated condition to aid in their campaign for the saving of souls is evident from the statement of the moral instructor in 1854 that he aimed especially to "impress upon the prisoners the need of a savior in order to obtain

⁹⁸*Laws of the General Assembly, 1838-9, chap. 66.*

⁹⁹*Annual Report of the Western Penitentiary, 1840, Senate Journal, 1840, vol. II, p. 256.*

¹⁰⁰*Ibid., pp. 263-4.*

¹⁰¹*Ibid., 1841, Senate Journal, 1841, vol. II, pp. 411-12.*

¹⁰²*Ibid., 1846, House Journal, 1846, vol. II, pp. 164.*

¹⁰³*Ibid., 1850, Senate Journal, 1850, vol. II, pp. 629.*

everlasting life, which is a *life of freedom*."¹⁰⁴ Unlike the Eastern Penitentiary the Allegheny institution was early provided with a chapel. As soon as it was made legal to congregate prisoners by the law of 1869 a chapel seating six hundred and fifty was immediately erected.¹⁰⁵ When the new structure was built at Riverside a chapel was provided. Though it was soon outgrown, it has been adequate in the last few years on account of sending many prisoners to the new site at Rockview.

In 1869 Dr. John Lynn Milligan began his forty years of service as moral instructor at the Western Penitentiary. A student at college under E. C. Wines, Dr. Milligan was one of those early philanthropists who, like Louis Dwight, E. C. Wines and F. H. Wines, came to the field of prison reform with a theological or ministerial background. He was a leading figure in American prison reform, serving for twenty years as secretary of the American Prison Association, and also took part in most of the international prison congresses of his day. He combined to a rare degree a strong spiritual impulse, free from sanctimonious hypocrisy, and a practical sense of the necessity of better administrative and disciplinary machinery in order effectively to carry out any program of convict reformation. He recognized that prayer, exhortation and personal conferences must be supplemented by a classification of prisoners, commutation for good behavior, education, and the indeterminate sentence and parole.

As the Western Penitentiary has increased in population and its inmates have been divided between the Riverside and Rockview sites the number of moral instructors has been increased to four, a Catholic and Protestant clergyman at both sites. In addition, Jewish clergymen make regular visits to the institution to conduct services for the Hebrew inmates. No aid in this field comparable to that of the *Philadelphia Society for Alleviating the Miseries of Public Prisons* in the Eastern Penitentiary has been rendered to the Western Penitentiary. For some time the *Allegheny Prison Society* gave effective assistance in visiting prisoners and aiding discharged prisoners,¹⁰⁶ but their work has long since ceased.

2. Academic Education

While the moral instructor at the Eastern Penitentiary rendered important assistance in teaching ignorant convicts, and the visiting

¹⁰⁴Ibid., 1854, *Legislative Documents*, 1854, p. 287.

¹⁰⁵See above, pp. 193ff.

¹⁰⁶Cf. *Annual Report of the Western Penitentiary*, 1878, p. 22.

members of the *Philadelphia Society for Alleviating the Miseries of Public Prisons* also gave aid in this way, the educational facilities of the Cherry Hill institution have from a very early date been in the hands of a special teacher for illiterates and those with a meagre education. His efforts have, however, always been handicapped by the system of solitary confinement which, until 1913, forbade the congregation of prisoners for educational, as well as for religious and industrial purposes. This has made impossible the more effective and expeditious method of teaching the illiterate convicts in classes where the same explanation and exposition of the lesson would suffice for a score or more of students. Information has necessarily been imparted through private lessons in separate cells down to very recent times. The office of teacher began as one to which the incumbent gave only part of his time, the rest being occupied in the capacity of an inspector of prison industries. As the number of prisoners gradually increased he transferred more and more of his attention to teaching. Until the last few years the instruction was limited almost wholly to teaching reading, writing and arithmetic—the “3 R’s”—to illiterates; only in the last two or three years has there been any consistent attempt to give advanced academic or vocational instruction.

The beginnings of a distinct educational department in the Eastern Penitentiary go back to 1844, when a teacher was appointed to give a part of his time to imparting elementary instruction to the unschooled convicts, the remainder of his time being devoted to supervising a part of the industrial operations of the institution. The inspectors commented on this innovation in their report for the year, “a schoolmaster has, thus, been successfully introduced into the prison, whose chief duty it is to teach the ignorant to read and write, and practical arithmetic.”¹⁰⁷ That these modest beginnings were at least successful on a small scale is evident from the numerous references in the annual reports of the institution to the successful work of the teacher.¹⁰⁸ By 1859 about eighteen hundred lessons were given annually to the convicts, and in the following year it was reported that twenty-three hundred lessons had been given.¹⁰⁹ The activities of the teacher increased until, by 1874, about sixty-seven hundred lessons were given by the teacher in the years 1873-74.¹¹⁰ By 1881 it had become necessary to have a separate teacher who gave all of his time to instructing illiterate

¹⁰⁷*Annual Report of the Eastern Penitentiary*, 1844, p. 15.

¹⁰⁸*Ibid.*, 1845, p. 13; 1846, p. 29; 1852, p. 15; 1854, pp. 9-10, 33-4; 1858, pp. 10-11.

¹⁰⁹*Ibid.*, 1860, pp. 50-51.

¹¹⁰*Ibid.*, 1873-4, p. 223.

prisoners in reading, writing and arithmetic and to caring for the greatly augmented library.¹¹¹ In 1881 the teacher had 247 pupils on his list, and by 1895 this number had increased to 335, though there is no doubt but that this increase was in part due to the growth of the prison population during this interval.¹¹² Under Warden McKenty the educational facilities in the Eastern Penitentiary have been strengthened and the school ranks well with those of the better prisons of the country. The instruction extends from the beginning class for illiterates through the grammar school grades. The sessions are held daily from 8:30 to 11:15 in the forenoon and from 12:30 to 4:00 in the afternoon. All uneducated prisoners are required to attend the sessions of the school. In addition to the work of the regular teacher, the visitors of the *Philadelphia Society for Alleviating the Miseries of Public Prisons* have rendered valuable assistance in giving instruction to the illiterate convicts.

Next to the work of the prison school the most effective educational agency has been the library. This was also established in 1844 through a gift of a number of books by one of the inspectors, Mr. J. Bacon. The inspectors remarked that through this innovation "punishment is made a positive blessing to the ignorant."¹¹³ The number of volumes in the library has had a steady growth from this time. In 1854 two thousand volumes were reported.¹¹⁴ This number had grown to over eight thousand five hundred in 1881; to nine thousand in 1895, and to over fourteen thousand in 1917.¹¹⁵ The increase in the size of the library has required the services of a special librarian, no less than fifty-four thousand books being issued in 1917.¹¹⁶

While no special teacher of prisoners was appointed in the Western Penitentiary until 1873, the instruction of convicts goes back to a much earlier date. In the first report of the moral instructor, that for 1840, it was stated that each convict able to read was supplied with a spelling-book, an arithmetic and a slate.¹¹⁷ In their report for 1844 the inspectors asserted that "the moral instructor has devoted as much time to teaching reading, writing and the simple rules of arithmetic, as appeared to him compatible with his moral and ministerial obligations to the institution."¹¹⁸ The next year they reported that

¹¹¹Ibid., 1881, p. 97; 1883, pp. 108-11.

¹¹²Ibid., 1881; p. 97; 1895, pp. 142-3.

¹¹³*Annual Report of the Eastern Penitentiary*, 1844, pp. 15-16.

¹¹⁴Ibid., 1854, p. 29.

¹¹⁵Ibid., 1881, p. 95; 1917, p. 77.

¹¹⁶Ibid., 1917, pp. 77.

¹¹⁷*Annual Report of the Western Penitentiary*, 1840, *Senate Journal*, 1840, vol. II, p. 263.

¹¹⁸Ibid., 1844, *Senate Journal*, 1844, vol. II, p. 56.

“the moral instructor teaches the unlettered to read and write, and comprehend the beauty and usefulness of their mother-tongue.”¹¹⁹ In 1856 the inspectors said that “aside from the regular ministration of his sacred office on Sunday, during the residue of the week the moral instructor visits the prisoners from cell to cell, teaching the illiterates to read and write; exhorting the vicious, infusing into their hardened natures wholesome truths, and preparing them not only for their final responsibility; but upon their discharge hence to encounter the world’s criticism and the world’s charity.”¹²⁰ The law of 1869, allowing the congregation of convicts in the Western Penitentiary, made it possible for the first time to organize classes for instruction in any Pennsylvania penal institution. As might have been expected from so ardent an apostle of prison reform, Chaplain Milligan at once organized a class for instruction in “the rudiments of knowledge,” but complained of the lack of an adequate school-room. In addition to those pursuing the more elementary studies, it was asserted that six were studying algebra, one geometry and four Latin and Greek.¹²¹ In 1873, as a part of the general reform movement following 1869, a prison day school was established with a regular teacher for this purpose. The teacher was Mr. Joseph S. Travelli, who filled the position with eminent success until the school was temporarily abandoned in 1881.¹²² By 1875 there were about 300 in the prison school and in the year 1880 about 700 received instruction.¹²³ In 1881 the flourishing day school was for some reason abandoned, probably because of the demand for the labor of the prisoners by the contractors. By 1886, however, contract convict labor had come to an end in Pennsylvania and the day school for prisoners was revived with 89 enrolled and some of the adequately trained prison officers as teachers.¹²⁴ Since this time the prison school has been in session with no extensive break, but it has never been as prominent and successful as it was in the late “seventies.” During this recent period a special teacher was generally provided, though the teaching was sometimes done by scholastically inclined officers and by the chaplain.¹²⁵ At the present time¹²⁶ the educational facilities at the Western Penitentiary are less extensive and efficient than in the Eastern Penitentiary, this being the weakest element in the

¹¹⁹Ibid., 1845, *Senate Journal*, 1845, vol. II, pp. 186

¹²⁰Ibid., 1856, *Legislative Documents*, 1856, p. 375.

¹²¹Ibid., 1869, pp. 83-5.

¹²²*Annual Report of the Western Penitentiary*, 1873, pp. 35-6.

¹²³Ibid., 1875, pp. 62-3; 1880, p. 71.

¹²⁴Ibid., 1885-6, pp. 74-5.

¹²⁵Ibid., 1887-8, pp. 71-2; 1889-90, pp. 73-4; 1895-6, p. 107; 1899-1900, p. 101; 1902, p. 103.

¹²⁶September, 1918.

generally excellent management of the institution. During the year 1918 no regular teacher was provided, the teaching being done by educated convicts under the general oversight of the chaplain. Instruction was given to foreigners and illiterates only.

The first mention of a library in the Western Penitentiary is found in the report of the moral instructor for 1840, in which he stated that the institution possessed a library of about one hundred volumes, making possible a monthly exchange of books. He called attention to the obvious need of a larger library.¹²⁷ The library facilities increased gradually through gifts and some slight purchases until, by 1877, it was reported that there were about four thousand five hundred volumes in the library and that the library had become so famous in the prison world that it had received the favorable comment of the New York Tribune.¹²⁸ By 1896 the library had nearly doubled in size, and in 1902 it was stated that there were eleven thousand five hundred volumes in the library.¹²⁹ At present there are about fourteen thousand volumes in the library of the Western Penitentiary with very liberal rules governing their use.

3. Vocational Education

While provisions for some systematic vocational instruction in the Eastern Penitentiary have only been made in recent years, the value of such instruction has long been recognized. For more than a half century after the establishment of the Pennsylvania system one of the chief arguments for that system had been the fact that the separation and individual instruction of the prisoners had allowed the teaching of a trade to each. This defense of the system lingered long after it possessed any validity, for after 1860 the handicraft trades taught in the penitentiary had become antiquated through the competition of mechanical industry. Further than contending that the separate system was based on vocational instruction, the inspectors of the Eastern Penitentiary vigorously maintained that a properly organized trade school for juvenile delinquents would do more than any other single factor to effect their reformation and prevent them from becoming habitual criminals and prospective inmates of the state penitentiaries.¹³⁰ In spite of this verbal recognition of the reformatory value of voca-

¹²⁷*Annual Report of the Western Penitentiary, 1840, Senate Journal, 1840, vol. II, p. 263.*

¹²⁸*Ibid.*, 1877, pp. 63-4.

¹²⁹*Ibid.*, 1895-6, p. 107; 1902, p. 99.

¹³⁰*Annual Report of the Eastern Penitentiary, 1870, p. 37; 1880, p. 31; 1881, pp. 75ff.; 1886, pp. 10ff.; 1891, pp. 35ff.*

tional education little or nothing was ever achieved in this direction in the Eastern Penitentiary until recently, when Warden McKenty made provision for correspondence courses in technical and vocational subjects. Particularly significant have been extension courses in engineering and agriculture which have been arranged in co-operation with Pennsylvania State College. However praiseworthy this innovation may have been, it has done but little to introduce any comprehensive system of vocational education, such as is in operation at the Huntingdon Reformatory. At the close of the year 1917 only 68 out of over 1,400 convicts were receiving instruction of this sort and little practical training was given in these lines except such as was possible in connection with the engineering operations involved in the maintenance and administration of the penitentiary plant.¹³¹ No one could fail, however, to commend the administration of the penitentiary for their recognition of the fact that vocational instruction is a vital part of an adequate system of prison discipline.

Nothing of any consequence in the way of vocational instruction has ever been accomplished in the Western Penitentiary. Down to 1869 the conventional arguments in favor of the virtues of the Pennsylvania system in the way of industrial training were solemnly repeated by the officers in their annual reports. The extensive development of mechanical industry under the contract system following 1870 made any successful vocational education quite out of the question. The anti-prison-labor legislation following 1883 has made it impossible to embody any industrial education in the manufacturing system of the penitentiary, and the state and local authorities have never been impressed with the value of the institution of a non-productive and purely instructive system of vocational education. Much has been accomplished incidentally in this line since the beginning of the work on the new central penitentiary at Rockview and the cultivation of the extensive farming lands on this site, but these achievements can in no way be regarded as an adequate or permanent substitute for a comprehensive program of industrial education. Vocational education, thus, has not entered Pennsylvania penology in any marked manner through the state penitentiaries. Rather, it has come in the Reformatory at Huntingdon, where there exists the most extensive provisions for purely vocational instruction to be found in any American correctional institution, and in the Pennsylvania Training School at Morganza, where important steps have been taken in this direction.

4. *Social Education*

Crime in its most fundamental sense being an anti-social act, the true reformation of the criminal, where possible, consists in his effective socialization in preparing him to live in accordance with the social, moral and legal rules prescribed for individual conduct by the group of which he is a part. The older penology of the last century maintained that this essential goal of a reformatory system of penal discipline could best be attained simply through a more or less savage system of repressive punishment, which made the individual feel very keenly the painful results of an infraction of the legal regulations of the community. This notion, however, could only endure while the old metaphysical notion of crime was accepted which represented the criminal as a perfectly normal individual—a “free moral agent” who perversely chose to commit crime rather than to lead a law-abiding existence. Now that this view of criminality and the criminal has totally passed away among scientific students of the crime problem, and the criminal—at least the habitual offender or recidivist—has been shown to be an abnormal being whose normal conduct is criminal activity, it has become apparent that no system of prison discipline can be regarded as likely to be genuinely reformatory unless it provides for the adequate training of the prisoner in the duties of citizenship and social responsibility. In other words, the fundamental success or failure of any modern system of prison discipline must be judged upon the basis of its effectiveness in preparing the inmate for the resumption of the normal responsibilities of social life upon his release.

It has long been recognized by psychologists and sociologists that no effective system of social education can be based wholly on eloquent sermons upon personal salvation or rhetorical addresses upon the duties of citizenship. The discipline of man in social groups has been achieved in quite a different manner through concrete and personal experiences which have been often repeated and bring out forcibly and clearly the rewards which may be expected to attend conformity to group rules for conduct and the penalties for deviation from these.¹³² It has become evident that any significant plan for the social rehabilitation of convicts must be based upon a similar system which will impress upon the mind of the prisoner the advantages of acquiescence in the rules of conduct imposed for the government of the prison community and the unfavorable results which attend their violation. Only in this manner

¹³¹Ibid., 1917, p. 76.

¹³²See on this point especially W. Trotter, *The Instinct of the Herd in Peace and War*; W. G. Sumner, *Folkways*; E. A. Ross, *Social Control*.

can the convict be prepared for a subsequent life of freedom with any promise of success. Most of the advances in prison administration in the nineteenth and twentieth centuries have had as their fundamental aim the achievement of this result. The penological doctrine of the deterrent value of punishment was at once the most popular and the most crude of all these attempts to socialize the prisoner. Much more rational and effective were the system of commutation for good behavior, which had its origin chiefly in Maconochie's "mark" system, and the method of grading, promoting and paroling prisoners, which was first extensively practiced by Sir Walter Crofton in his "Irish" system of prison administration and came into American penology chiefly through the medium of the American adaptation and improvement of the methods of Crofton in the Elmira system. A further development of social education came in the gradual introduction of the "honor" system in some phases of penal discipline, particularly with respect to prisoners who had earned the respect and confidence of the authorities through good conduct. The reliance upon honor was a prominent part of the Irish system, particularly in the final stage of incarceration at Lusk, and was gradually introduced into American penal practices, especially by Gideon Haynes, the able and progressive warden of the Massachusetts State Penitentiary at Charlestown.

The latest and most advanced phase of social education in penal discipline has been associated with systems of convict self-government designed to train the prisoners for a normal social life by practical experience in self-government in an environment as nearly like that into which they will go upon release as it is possible to maintain within a penal institution. Quite contrary to general supposition, the notion and practice of inmate self-government in penal and reformatory institutions is not a wholly recent innovation. As early as 1831 Beaumont and De Tocqueville reported a very advanced system of self-government in the "House of Reformation" for juvenile delinquents in South Boston.¹³³ But in spite of early and sporadic instances of the introduction of systems of inmate self-government in penal institutions, the first systematic and fearless attempt to institute a system of convict self-government was made by Mr. Thomas Mott Osborne in Sing Sing Prison following 1915. The essence of Mr. Osborne's *Mutual Welfare League* consisted in the practical application of the doctrine

¹³³Beaumont and DeTocqueville, *On the Penitentiary System in the United States*, translated by Francis Lieber, Philadelphia, 1833, pp. 216-23. This is discussed at length by Winthrop D. Lane in his revised edition of F. H. Wines' *Punishment and Reformation*, 1918. See also O. F. Lewis, loc. cit.

that a convict could not be trained for normal social life in the paralyzing environment of the conventional repressive system of prison discipline, but required for this social education a set of surroundings calculated as much as possible to bring to bear the influences of normal life in a social group, and thereby to fit the inmate for such an existence upon the expiration of his sentence. Accordingly, the rules of discipline of the institution were chiefly left to a body of delegates of fifty convicts elected by the inmates on the basis of the representation of the several work gangs. Infractions of discipline were dealt with by a board of five judges chosen by the delegates, though an appeal might be taken from their decision to the warden. The decisions of the judges were carried out by the regular officers of the prison. No keepers or guards were allowed in the shops, discipline here being wholly in the hands of convicts. A system of token money was introduced in the shops. A convict commissary was organized from which inmates could purchase articles of comfort. An employment bureau was maintained by the members of the League. Outdoor recreation, lectures and entertainments were provided. The position and privileges of the inmates depended upon the excellence of their adherence to the regulations of the self-governing system. It was further intended that released members of the League should make an effort to find employment for their fellow-members upon the expiration of their sentences and should attempt to sustain the efforts at reformation which had been initiated while at Sing Sing. In this way it was hoped that an adequate system of social education might be provided which would restore to a normal life the great majority of convicts who had hitherto been released only to be returned for another offense after a brief period of freedom.¹³⁴ A number of influences combined to bring Mr. Osborne's régime to a premature end at Sing Sing. Among these may be mentioned Mr. Osborne's failure to comprehend that his system was applicable only to non-defective convicts, and that it must be preceded by an adequate system of clinical observation, classification and promotion of convicts, and his own unyielding and uncompromising attitude, so characteristic of the ardent reformer on the defensive; the opposition of the keepers and guards who had been trained wholly in the savage methods of the conventional repressive penology; the bitter enmity of grafting contractors who found Mr. Osborne as little susceptible to dishonesty as to penological conventionality; the opposition of political rivals among the notorious "rounders" of the machine politicians; and

¹³⁴The whole subject is best discussed in Mr. Osborne's published lectures, *Society and Its Prisons*.

the jealousy of leading penologists of a more conventional and conservative cast. These facts, however, should not blind one to the certainty that Mr. Osborne's innovation was the most significant advance in American penology since the introduction of the Elmira system and is likely in its essence to be universally adopted within the next generation for application to such convicts as it can in any way be hoped to reform.¹³⁵

The degree to which commutation, classification and promotion has been introduced into Pennsylvania penology has been already discussed.¹³⁶ The honor system has been widely and successfully developed by Warden McKenty at the Eastern Penitentiary and by Warden Francies at the new penitentiary site in Centre county. Indeed, it is doubtful if there is another place in America where the honor system is so extensively and successfully applied to adult delinquents as at Rockview. The reception of the self-government notion in the state penitentiaries of Pennsylvania has been radically different from the attitude towards the honor system. Not only has self-government never been adopted to the slightest degree in the state penitentiaries, but even the present progressive wardens of both institutions profess to oppose this scheme with extreme bitterness. In this matter enlightened despotism rather than democratic self-government and social education is the keynote of the present order.

VIII. THE SUSPENDED SENTENCE, PROBATION AND THE NON-INSTITUTIONAL CARE OF DELINQUENTS

The beginnings of the non-institutional care of delinquents may be traced to the ticket-of-leave or parole system, which originated in the middle of the nineteenth century and has come to be a cardinal feature of modern penological theory and practice. This, however, merely made possible the removal of the convict from imprisonment during the latter portion of his term and in no way attempted to do away with imprisonment altogether. With the gradual growth among careful students of penology of the conviction that in many if not most cases the convict issued from prison a worse character than he was upon entry, especially in the case of young first offenders, there has arisen a determined movement to secure the introduction of a system of suspended sentence and probation, to be applied to those first offenders and others, who, it seems reasonable to believe, can be

¹³⁵Mr. Osborne has since applied his methods with success at the United States Naval Prison at Portsmouth, New Hampshire.

¹³⁶See above, pp. 171ff, 174ff, 187ff.

most effectively treated outside of a penal institution. As has been the case with nearly all of the radical innovations in penology, this progressive practice was first applied to juvenile delinquents, especially in connection with the creation of a juvenile court system in the more advanced municipalities of the country, a movement in which Judge Benjamin B. Lindsey of Denver was a pioneer and the most picturesque figure.

While there were earlier approximations to a juvenile court system in Pennsylvania, the basis of the present system was laid by acts of 1903. That of March 26, 1903, directed that "no child under the age of sixteen years shall be committed by any Magistrate or Justice of the Peace to any institution for the purpose of correction or reformation, but all applications for such commitment shall be made to the Court of Quarter Sessions of the county."¹³⁷ The powers of the Court of Quarter Sessions in dealing with these cases of juvenile delinquents under sixteen years of age were defined in an act of April 23, 1903. The premises and purposes of this act were set forth as follows:

The welfare of the state demands that children should be guarded from association and contact with crime and criminals, and the ordinary process of the criminal law does not provide such treatment and care and moral encouragement as are essential to all children in the formative period of life, but endangers the whole future of the child.

Experience has shown that children, lacking proper parental care or guardianship, are led into courses of life which may render them liable to the pains and penalties of the criminal law of the state, although, in fact, the real interests of such child or children require that they be not incarcerated in penitentiaries and jails, as members of the criminal class, but be subjected to a wise care, treatment and control, that their evil tendencies may be checked and their better instincts may be strengthened.

To that end, it is important that the powers of the courts, in respect to the care, treatment and control over dependent, neglected, delinquent and incorrigible children should be clearly distinguished from the powers exercised in the administration of the criminal law.

It was also decreed that a judge of the Court of Quarter Sessions should hold a juvenile court for the purpose of carrying out the provisions of the act.¹³⁹ He was to exercise his powers when, in the opinion of a magistrate, justice of the peace, district attorney or judge involved in the case, the interests of both the child and the state could

¹³⁷*A Comprehensive Review of the Work of the Juvenile Court of Philadelphia, 1903-8*, Philadelphia, 1908, p. 58. An earlier act, that of June 12, 1893, had provided for the separate and distinct trial of juvenile delinquents.

¹³⁸*Ibid.*, pp. 53-4.

¹³⁹*Ibid.*, p. 54.

no longer be served by allowing the child his ordinary liberties or by committing him to an ordinary institution for juvenile delinquents.¹⁴⁰ In such cases the judge of the juvenile court was authorized to "commit such child to the care of its parents, subject to the supervision of a Probation Officer, or to some suitable institution, or to the care of some reputable citizen of good moral character, or to the care of some training school, or to an industrial school, or to the care of some association willing to receive it."¹⁴¹ The parents, institution, association or individual to which the child was committed became by that fact its guardian.¹⁴² The commitment could not, however, extend beyond the age of twenty-one years.¹⁴³ It was further specifically ordered that no child under twelve years of age should be sent to a reformatory or correctional institution unless the suspended sentence and probation failed to operate successfully in such a case.¹⁴⁴ The court was authorized to appoint suitable probation officers to investigate the circumstances connected with the cases of all children brought before the court in accordance with the provision of the act. The possibility of readily obtaining competent probation officers was, however, made exceedingly remote by the stipulation that they should receive no salary.¹⁴⁵

Since the passage of the act of 1903 several important additions have been made to the legal basis of the probation of juveniles in Pennsylvania. An act of July 12, 1913, established a Municipal Court for the city of Philadelphia and gave it the jurisdiction over cases involving juvenile delinquents and their probation.¹⁴⁶ The jurisdiction was confirmed and further defined in an act of June 17, 1915.¹⁴⁷ An act of March 15, 1915, gave the county court of Allegheny county jurisdiction over cases involving juveniles in that county.¹⁴⁸ It also provided for the securing of competent probation officers by making it possible to pay the chief probation officer three thousand dollars per year and his subordinates one-half of that sum.¹⁴⁹ The absurd provision in the

¹⁴⁰Ibid., pp. 54-55.

¹⁴¹Ibid., p. 56.

¹⁴²Ibid.

¹⁴³Ibid., p. 57.

¹⁴⁴Ibid.

¹⁴⁵Ibid., pp. 55-56. The laws relating to juvenile courts, probation and juvenile institutions are conveniently brought together by John H. Fertig and S. Edward Hannestad in *A Compilation of the Laws Relating to the Juvenile Courts and Dependent, Neglected, Incurable and Delinquent Children*, Harrisburg, 1916.

¹⁴⁶*Laws of the General Assembly*, 1913, pp. 711ff.

¹⁴⁷Ibid., 1915, pp. 1017ff.

¹⁴⁸Ibid., pp. 5ff.

¹⁴⁹Ibid.

act of 1903 that probation officers should receive no public salary in Pennsylvania was wiped out by an act of April 1, 1909, which allowed the court of quarter sessions to pay probation officers a salary of not to exceed one hundred dollars per month.¹⁵⁰ As the Municipal Court of Philadelphia contemplated a rather extensive application of the principle of probation to both juvenile and adult delinquents in accordance with the laws of April 23, 1903, May 10, 1909, and June 19, 1911, an act of June 15, 1915, made provision for a salary for probation officers in Philadelphia which would make it possible to secure officers of high capacity who might be expected to devote all of their time to their duties. The president judge of the municipal court was authorized to appoint a chief probation officer for the city who would receive a salary of not to exceed five thousand dollars and subordinates to receive not over half that amount.¹⁵¹

The actual mode of operation of the act of 1903 and its subsequent minor revisions is thus set forth by Judge William H. Staake, who has long been the leader among Philadelphia jurists in the cause of the reform of criminal procedure in cases dealing with juvenile delinquents:

There are no classes specifically entitled to probation instead of "incarceration." What is meant by this is: The whole Juvenile Court idea is, that the offender is only a delinquent, and not an intentional violator of the law, or in fact a criminal. He is not incarcerated in the sense of imprisonment. He may be, and is, liable to detention in the care of an individual, or, in some cases, in the care of an institution.

The person or official who is to decide what shall be the disposition made of the delinquent juvenile was formerly the judge of the Court of Quarter Sessions, now the judge of the Municipal Court, so far as Philadelphia is concerned; that court having as a statutory, and not as a constitutional court, taken over all matters incidental to the Juvenile Court, as well as matters affecting domestic relations, such as making orders for the maintenance of the wife by the husband or of the wife and children by the husband, or of the children alone by the husband.

It should be stated that the Municipal Court in Philadelphia and another analogous court in the County of Allegheny, are the only special courts which have charge of this work. In the counties, other than Philadelphia and Allegheny, the Court of Quarter Sessions for such individual county or judicial district would have the jurisdiction and the authority in connection with juvenile delinquents.

The judge, who under the calendar of the particular court, exercises the discretion, whether to detain the delinquent juvenile offender, or whether to place him on probation in his own family under the oversight

¹⁵⁰Ibid., 1909, pp. 89ff.

¹⁵¹Ibid., 1915, pp. 988ff.

or superintendency of a probation officer, or whether to place him in the care of some private person, who would be willing to undertake the responsibility for such supervision, or to place him in a suitable institution such as the institution at Glen Mills, or under the supervision of an officer of certain well known charities, such as the Children's Aid Society and the Society for the Prevention of Cruelty to Children, or other recognized societies having the same object in view.

In Philadelphia and Allegheny, and in other counties, the probation officers appointed by the respective courts would investigate the conduct of juvenile delinquents, and then report regularly to the tribunal appointing him.

The results of violation of probationary conditions would be either a continuance of the probation by the court, instead of a discharge of the probationer, on the recommendation of the probation officers, or in some cases, where it was found the delinquent was a hopeless case, and was not controlled by the court's probation officers, there might be a commitment to an institution for juvenile delinquents, or even to the Huntingdon Reformatory, so far as male juvenile delinquents are concerned, when the seriousness of the offense of the delinquent was of a character to submit the case to a formal trial in the courts.¹⁵²

As has been the case with almost every progressive prison reform practice in the past so with probation, its application to juvenile delinquents was soon followed by its introduction into the methods of treating adult delinquents not convicted of major crimes. At the present time some twenty-six states now have probation systems which are applied to adult delinquents with a greater or less degree of thoroughness. Adult probation was first permitted in Pennsylvania according to the provisions of an act of May 10, 1909, and was continued practically unchanged by an act of June 19, 1911. As a part of the acts also establishing the parole and indeterminate sentence systems in Pennsylvania, it was the product of the agitation of the same group of reformers that has been described above in connection with the establishment of the indeterminate sentence in that state.¹⁵³ That portion of the act of 1911 which deals with the subject of probation still governs that practice in Pennsylvania and is given in the following paragraphs:

Be it enacted, etc., That whenever any person shall be convicted in any court of this commonwealth of any crime, except murder, administering poison, kidnapping, incest, sodomy, buggery, rape, assault and battery with intent to ravish, arson, robbery or burglary, and it does not appear to the said court that the defendant has ever before been imprisoned for crime, either in this state or elsewhere (but detention in an institution for

¹⁵²From a memorandum kindly furnished to the writer by Judge Staake at the request of Dr. J. F. Ohl.

¹⁵³See above, pp. 174ff.

juvenile delinquents shall not be considered imprisonment), and where the said court believes that the character of the defendant and the circumstances of the case are such that he or she is not likely again to engage in an offensive course of conduct, and that the public good does not demand or require that the defendant should suffer the penalty imposed by law; said court shall have power to suspend the imposing of the sentence, and place the defendant on probation for a definite period, on such terms and conditions as it may deem right and proper, said terms and conditions to be duly entered on record as a part of the judgment of the court in such case.

In any case where a fine only is imposed, and the defendant might be imprisoned until such fine be paid, the court may direct, as one of the terms of the probation, that such fines shall be paid in certain instalments at certain times: Provided, however, that upon payment of the fine, judgment shall be satisfied and probation cease.

Whenever or wherever the court may deem it necessary and desirable, it may appoint a discreet person to serve as probation officer, for the performance of such duties as the court shall direct. The salary of such officer shall be determined by the court and this, together with the necessary expenses incurred while in the actual performance of duty, shall be paid by the county, upon vouchers approved by the court and county commissioners. In no case, however, shall a defendant be committed in the custody of a probation officer of the opposite sex.

Whenever a person placed on probation, as aforesaid, shall violate the terms of his or her probation, he or she shall be subject to arrest in the same manner as in the case of an escaped convict; and shall be brought before the court which released him or her on probation, which court may thereupon pronounce upon such defendant such sentence as may be prescribed by law, to begin at such time as the court may direct.

Whenever it is the judgment of the court that a person on probation has satisfactorily met the conditions of his or her probation, the court shall discharge such defendant and cause record thereof to be made: Provided, That the length of such period of probation shall not be more than the maximum term for which the defendant might have been imprisoned.¹⁵⁴

Though the provisions of this act make possible a very liberal use of the principle of adult probation and the suspended sentence in Pennsylvania, the fact that their application has been made optional rather than obligatory has made the operation of the law in this respect as variable and inconsistent as the application of the parole and indeterminate sentence law in that state. Just as educated and sensible judges make a wise and liberal use of their power to fix the minimum sentence, so they frequently apply their power to suspend sentence and admit the convicted person to probation, and in the same manner that reactionary and short-sighted judges make a vicious use of the mini-

¹⁵⁴*Laws of the General Assembly, 1911, pp. 1055-6.*

imum sentence provision, so they rarely or never admit a convict to probation. Without either the compulsory probation of certain classes of lesser offenders or a more universally intelligent judiciary the suspended sentence and probation can meet with only limited success in Pennsylvania, as elsewhere. Only in connection with the probation department of the Philadelphia Municipal Court, under the direction of Chief Probation Officer Louis N. Robinson, has any notable progress been made, but here the prospects for a successful application of the principle of the suspended sentence and parole to delinquents are unexcelled in this country. Whatever the shortcomings in its use in Pennsylvania at the present time, there can be no doubt but that it will come to be one of the vital features of the penology of the future. Its value and its desirability has been admirably summarized in the recent report of the Committee to Investigate Penal Systems:

Conceived as a mere incident of the sentencing power, to be exercised only in exceptional cases, the suspended sentence and probation are beginning to disclose themselves as a momentous, not to say revolutionary step in the progress of penology, not less important in its ultimate consequences than the substitution a century ago of imprisonment for the death penalty and other forms of physical punishment. Like the older forms of punishment which it superseded, imprisonment, too, has proved a failure, so far at least, as the newer aim of punishment, the reformation of the wrongdoer is concerned. As we are coming to see, the protection which society enjoys through the imprisonment for a few months or years of a small portion of the criminal class is dearly purchased by a system which returns the offender to society less fitted than before to cope with the conditions of a life of freedom. More and more, as we develop a probation service worthy of the name, will the courts be reluctant to commit men, women and children to the demoralizing associations and discipline of institutional life and will give them their chance to redeem themselves under competent guidance and supervision among the associations and activities of everyday life.¹⁵⁵

IX. SOME IMPORTANT REFORM MOVEMENTS IN PENNSYLVANIA PENOLOGY NOT IMMEDIATELY CONNECTED WITH THE STATE PENITENTIARIES

There are several important developments in the reform of penology in Pennsylvania, which represented the labors of various progressive movements and organizations and constituted advances of great significance, but were not directly connected with the state peni-

¹⁵⁵*Report of the Commission to Investigate Penal System, Philadelphia, 1919, p. 25.*

tentiaries, though in a very real sense they were differentiations from these older institutions.

The Philadelphia House of Refuge—the first institution differentiated from the state penitentiaries—was opened in 1828. While an annex for colored inmates and new buildings for white inmates were erected in the middle of the last century, no important administrative or disciplinary progress occurred until 1892, when the boys' department was moved to Glen Mills and the example of Ohio, New Jersey and other states was followed in adopting, in the place of the barbarous and prison-like "house of refuge" architecture and organization, the more humane and advanced "cottage-farm" system which had been originated by Demetz and De Courteilles at Mettray, France, in 1840. The girls' department was moved to Darlington in 1910, and, under the direction of Superintendent Martha P. Falconer, has become one of the most progressive institutions of its kind in this country. Progress has also been made in the way of institutions for juvenile delinquents in the western part of the state. The House of Refuge of Western Pennsylvania was opened at Allegheny in 1854. Its name was changed to the Pennsylvania Reform School in 1872. In 1876 it was removed to Morganza and the cottage system adopted. In 1912 its name was changed once more, this time to the Pennsylvania Training School. Under the management of Superintendent W. F. Penn it has become in recent years a rival of the Darlington institution in the enlightened nature of its correctional methods.

In 1889 there was opened the Huntingdon Industrial Reformatory which provided a rational correctional institution for the younger male offenders guilty of the less serious offenses. It had been recommended by Governor Henry M. Hoyt, a special commission appointed to investigate the Elmira Reformatory, the Pennsylvania Prison Society and the state board of public charities. Modelled directly after the Elmira system, it adopted in its administrative organization nearly all of the great reforms in nineteenth century penology, including the reformatory idea of Charles Lucas, the commutation system of Maconochie, the classification and promotion methods of Crofton, the indeterminate sentence as recommended by Whatley, Combe and the brothers Hill, the parole system of Marsangy, and the notion of the value of instructive labor which had been developed by the Pennsylvania Quakers, by Montesinos in Spain, and by Obermaier in Bavaria. A somewhat more modern institution for women of a comparable type to the men admitted to Huntingdon was authorized by an act of 1913 creating the State Industrial Home for women, subsequently located at Muncy.

Among those most active in the campaign for the establishment of this institution should be mentioned Mrs. Edward Biddle, Mrs. S. Gordon McCouch, Mrs. Franklin P. James, Mrs. Martha P. Falconer, the Pennsylvania Prison Society and the state board of public charities.

Finally, attention should be called to the admirable industrial farm organized by Mr. A. H. Leslie in recent years at the Allegheny County Workhouse. It is a model institution of its kind and serves as an example of what may be expected from what seems destined to be one of the pivotal institutions of the penology of the future when the archaic county jail shall at last have passed to its deserved oblivion.

X. SUMMARY

It has been shown that Pennsylvania has exemplified most of the significant advances in nineteenth century penology, though some of the more recent and most significant steps in progress have not found any footing here. It should further be clear that Pennsylvania has long since ceased to be a pioneer, an innovator, and a leader in penological progress and has become content to follow, more or less tardily, progressive departures initiated elsewhere. It must, nevertheless, be admitted that, with the exception of the industrial situation in the state penitentiaries, the penological theories and practices of Pennsylvania are not widely different from those which prevail in most of the states throughout the country, but are fairly well on a level with the general situation which exists in this field. Hence, the cause of the backwardness of Pennsylvania, when compared with the expert penological knowledge of the leaders in prison reform, is to be sought not in any special conditions existing in that state, but in the faulty opinions and information possessed by the general public throughout the United States regarding the causation of crime and the treatment of the criminal. While more progress has been made in the real scientific basis of criminology and penology in the last forty years than was previously achieved since the dawn of history, these advances are scarcely known to the general public and, consequently, cannot have modified their views. It is not surprising, therefore, that the level of public intelligence with regard to the theory and practice of penology is less advanced than the reforms proposed by Plato in this field more than two thousand years ago.

It should, therefore, be evident that the ultimate solution of the problems of penology in both Pennsylvania and the United States cannot be scientifically and speedily attained except through a thorough-

going and persistent campaign of public education along this line. Such a program is easier of fulfillment now than ever before. The old theological and metaphysical obstacles to a rational view of the "crime problem" are gradually dissolving; social reform in a general way, at least, has finally become respectable and somewhat popular, and not only has the scientific knowledge which must form the foundations of the penology of the future become assured, but also practical experiments in enlightened penal administration have been carried out with eminent success. It is not enough, however, that a knowledge of such facts should be prevalent among experts and reformers. It must be diffused among the general body of citizens upon whom the reformers must depend for the constructive legislation and the sentimental support which is indispensable to permanent progress. Again, this campaign of education cannot be adequately conducted merely through the work of penological experts, technical journals of criminology and penology, or even in general periodicals dealing with social reform. It must be carried on in good faith and with energy by the general press, the lecture platform, and the pulpit until the whole public is as thoroughly educated along this line as it has become, for example, in matters of public health and hygiene. Until such a situation has been brought about, progress in penology is doomed to be sporadic, local and generally ineffective. The solution of prison problems, then, seems to be fundamentally a problem of persistent, conscientious and scientific publicity.