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Snell Putney

Gladys J. Putney

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ORIGINS OF THE REFORMATORY

SNELL PUTNEY AND GLADYS J. PUTNEY

Dr. Snell Putney is Assistant Professor of Sociology at San Jose State College. He has contributed articles to various sociological journals on the family and religious and political ideology. *Dr. Gladys J. Putney* has published articles on community structure and social change. The authors have recently completed a book on the emotional problems of the adjusted American.

In the following article, the authors trace the English and Irish progenitors of United States reformatories, the early American institutions, and finally the English progeny of the United States' efforts. Evaluating the aims as well as the results of the reformatory movement, the authors hope to illuminate some of the causes of the failure of the reformatories to reform.—EDITOR.

It is generally recognized by penologist and layman alike that reforming an inmate is the last thing an American "reformatory" is likely to do. Indeed, once one reflects on the matter, it is curious that such institutions were ever expected to perform such a function. Once an institution is in existence, cultural inertia keeps it operating, but inertia could hardly have created the reformatory. Why did anyone ever assume that enforced association with like-minded young offenders under circumstances which induce great hostility to all authority would also induce reform? The answer, of course, is that no one ever believed it. The structure and organization of the modern reformatory is the outgrowth of a peculiar process of unsuccessful imitation and unproductive compromise, and the unplanned and unloved end product is probably less adequate than any of its predecessors. As we cast about for a more effective successor, it is perhaps profitable to review the process by which we fell heir to the present system.

THE ENGLISH PRISON SYSTEM

The concept of reformation of offenders appeared in penological literature as early as the opening years of the nineteenth century, when the French penologist, J. M. Charles Lucas, wrote that "a curative program ought to displace the traditional prison discipline,"¹ but it was not until the middle of the century that such a program was attempted. Some elements of the reformatory system originated in the English penal colonies, notably under Alexander Maconochie at Norfolk Island, but the full implementation of a reformatory program did not occur until the enforced abandonment of the

transportation system created a crisis in England and Ireland.

By 1853, only Western Australia was willing to receive convicts. According to Sir Walter Crofton, between 1827 and 1846 no less than 64,375 convicts were transported from the United Kingdom, and the refusal of colonies to accept further convicts resulted in intense pressure to revise the penal system.² Confronted with the dual problems of providing detention for convicts at home, and of absorbing them into the labor force after the expiration of their prison terms, the British Parliament in 1853 passed an act which authorized the substitution of penal servitude for transportation, and the giving of tickets of leave to convicts under sentence.

One of the provisions of the act of 1853 permitted convicts to complete the final stage of their sentence outside the prison walls, ostensibly under supervision. This was probably the first legal step toward the indeterminate sentence, a crucial element in the implementation of any system which seeks to utilize the prisoner's desire for freedom as an incentive to his reformation. The lack of such a law had hampered Maconochie's program at Norfolk Island; by translating time sentences into marks, Maconochie had hoped to make reformation obviously advantageous to the prisoner. "When a man keeps the key of his own prison," Maconochie wrote, "he is soon persuaded to fit it to the lock."³ However, Maconochie had been unable to secure legal sanction for releasing the convicts who earned their marks before the expiration of their time sentences. The Act of 1853

² CROFTON, *CONVICT SYSTEMS AND TRANSPORTATION* 3 (London, 1863).

³ Cited in BARNES & TEETERS, *op. cit. supra* note 1, at 520.

¹ BARNES & TEETERS, *NEW HORIZONS IN CRIMINOLOGY* 519 (2d ed. 1951).

which provided for release on ticket of leave was thus a major step toward a workable reformatory system.

The Act of 1853 was the legal foundation on which Sir Joshua Jebb built what became known as the English Prison System, which consisted of a series of progressive stages leading to release. The first stage was one of separate and solitary confinement; the second consisted of associative labor, and the third stage was release on ticket of leave. However, the English system was never fully applied, and such application as it had, according to Crofton, "entirely neglected . . . supervision of the liberated convict and his reconsignment to the prison in the event of his misconduct."⁴

The Irish Convict System, developed by Sir Walter Crofton in the late 1850's, was a refinement of the English Prison System. For this reason it is frequently claimed that credit for the Irish system in reality belongs to Jebb rather than to Crofton. But it was Crofton who developed the intermediate stage, one of the most distinctive features of the Irish system. This was a period of semi-freedom between the stage of associative labor and the release on ticket of leave or license. Crofton also carried out in practice many elements which were only theoretically present in the English system (a notable example is the supervision of convicts released on ticket of license). The Irish system, moreover, served as the basic model for the reformatory when it leaped the Atlantic and began to develop in America. The Irish system, therefore, merits more careful consideration.

THE IRISH CONVICT SYSTEM

Like the English system, the Irish system utilized an initial stage of solitary confinement. As described by Crofton, the first stage can be summarized as follows:

"Separate imprisonment in a cellular prison at Mountjoy, Dublin, for the first eight or nine months of the sentence. Whether the period is eight or nine months, or even longer, depends upon the conduct of the convict. . . . In Ireland it is the practice to make this stage very penal, both by a very reduced dietary during the first half of the period—viz., four months—and by the absence of interesting employment during the first three months. By the time the convict is required for hard work in the second stage, the improved dietary in the latter portion of the

period in separation will have rendered him physically equal to perform it; and by the end of three months of the first stage the idler will generally have learned to associate industry with pleasure."⁵

Four English magistrates, visiting Irish prisons in 1863, gave a fuller explanation of the rationale of depriving the convicts of labor during the first part of the first stage. Having pointed out that dislike of steady work characterized the criminal, the four justices observed that "we, in England, have sought to correct that evil by making labor as penal as possible, by the treadmill and the crank . . . even where those have been discarded, we have sought to exact labour merely by the fear of punishment, and as in itself a punishment. . . ." ⁶ The consequences of such a policy were about what one would have expected, according to the justices, for work was "associated, in the prisoners' minds, with ideas the most disagreeable to them."⁷ In contrast, they observed that the Irish system "made idleness penal, work a privilege. The prisoner . . . forced to be idle, soon feels that to have something to do would be a great relief to the intense monotony of his existence."⁸ Modern penal practice and observation have underscored the same point: the prisoner may look upon work as a welcome break in enforced idleness. One of the outstanding features of Crofton's system was that it utilized this insight as a lever to effect the first movement toward reformation.

The second stage of the Irish system was similar to the stage of associative labor of the English system and borrowed heavily from the mark system of Maconochie. As Crofton describes this stage:

"There are different classes to be attained in the second stage, and a certain number of marks are required to be obtained by the convict before he can be promoted from one class to another.

"The maximum number of marks each convict can attain monthly is nine . . . three for

⁵ Crofton, *A Brief Description of the Irish Convict System, 1863*, cited in CARPENTER, REFORMATORY PRISON DISCIPLINE AS DEVELOPED BY RT. HON. SIR WALTER CROFTON IN THE IRISH CONVICT PRISONS 5 (London, 1872).

⁶ FOUR VISITING JUSTICES OF THE WEST RIDING PRISON AT WAKEFIELD [Wheatley, Akroyd, Waterhouse, and Foljambe], OBSERVATIONS ON THE TREATMENT OF CONVICTS IN IRELAND WITH SOME REMARKS ON THE SAME IN ENGLAND, 2 (London, 2d ed. 1863).

⁷ *Ibid.*

⁸ *Ibid.*

⁴ CROFTON, *op. cit.* *supra* note 2, at 3.

discipline . . . three for school . . . three for industry.

"There are four classes in the second stage—viz., the third (in which the convict is placed on his arrival from the first stage), the second, first, and advanced or A class. . . .

"Misconduct causes reduction, suspension, or the loss of marks. When the convict attains the A class, he is employed (although still in the second stage of his detention) on special works, and kept apart from the other convicts. . . .

"It will be intelligible, that the most successful in combating self, and in climbing the ladder of self-control and industry, will the soonest obtain the required number of marks, and the goal to which they lead—viz., The Intermediate Prisons,—and thence the liberty, for which the convict is supposed to have been made fit, by the lessons of those good schoolmasters, industry, self-control, and self-reliance, succeeded by a very special and natural training."⁹

The similarities to Maconochie's mark system (an indebtedness which Crofton acknowledged) are obvious, but the differences should not be ignored. In Crofton's mark system there is no translation of time sentences into marks; rather than a means of working off the sentence, the marks had become a means of moving from one stage to the next. Another difference was that Maconochie had sought to bring group pressures to bear on the individual prisoner through collective awarding of marks. As Maconochie described it, "to strengthen these moral checks and stimulants . . . prisoners are . . . distributed into small parties (say) of six, with *common* interests, each man thus labouring and refraining for others as well as for himself."¹⁰ To the modern mind, this group emphasis was an insightful practice, and Crofton's system was probably less effective than it could have been had he incorporated the group pattern with the other ideas he borrowed from Maconochie.

Convicts who failed to advance beyond the first or second stages of the Irish system were held until the expiration of their sentences in these stages and were then released, perhaps with reluctance on the part of the directors, who at times indicated their belief in a completely indeterminate sentence.

⁹ Crofton, *supra* note 5, at 7-9.

¹⁰ Maconochie, from a pamphlet published in 1847, quoted in SCRUTATOR [Charles Pennel Measor], *IRISH FALLACIES AND ENGLISH FACTS, being an appeal to the common sense of the British Public on the subject of the Irish Convict System* 14 (London [n.d. probably 1863]).

Those prisoners, however, who completed the required number of months in the "A" class of the second stage were eligible for transfer to an intermediate institution—probably the most famous element of the Irish Convict system.

In large part, the intermediate prisons were conceived as a remedy for the poorly supervised release on ticket of leave which had been practiced with unfavorable results in both England and Ireland. Crofton writes that the first intermediate institution was established at Smithfield "with a view not only of protecting the public against an unrestricted issue of 'Tickets of License,' but also of preparing convicts more thoroughly for their release."¹¹ Crofton refers to the intermediate institution as "a *filter* between the prisons and the community," and notes that "prisoners in the intermediate stage who misconduct themselves are at once re-consigned to more penal treatment, as having failed in their probation."¹² Crofton offers a general description of these intermediate institutions and their goals in the following passages:

"In this stage there are no marks. The result of the self-discipline effected by their attainment is here to be tested before the liberation of the convict.

"The training is special, and the position of the Convict made as natural as is possible; no more restraint being exercised over him than would be necessary to maintain order in any well-regulated establishment . . . The officers . . . are unarmed. Physical restraint is therefore impossible, and if possible, it would be out of place, and inconsistent with the principles which the establishments were instituted to demonstrate.

"1st. You have to show to the Convict that you really trust him, and give him credit for the amendment he has illustrated by his marks.

"2nd. You have to show to the public that the Convict, who will soon be restored to liberty for weal or for woe, may upon reasonable grounds be considered as capable of being safely employed."¹³

In describing the convicts in these intermediate institutions, Crofton points out that "the general feeling is that of desiring to amend . . ." a consequence he attributes to the fact that "the Convict has felt the intention of the system . . . that he is an individual whose special case and progress

¹¹ CROFTON, *A FEW REMARKS ON THE CONVICT QUESTION* 3 (Dublin, 1857).

¹² *Id.* at 10.

¹³ CROFTON, *op. cit.* *supra* note 2, at 8-10.

is noted, and very carefully watched in its development."¹⁴ The idea of individualization of treatment was not new, even in Crofton's day, but Crofton was one of the first to cease dealing with offenders *en masse*, and to make a serious attempt to treat the offender as an individual.

After the period of trial in the intermediate prison—a period which constituted a definite proportion of the sentence—the prisoner was eligible for conditional release on ticket of license. Convicts on ticket of license were required to register with the police and to make no change of residence without due notification. In addition, they were supervised in bi-monthly visits by the authorities of the intermediate institution who had secured their employment, notably by Mr. Organ, the famous lecturer in these prisons. Association with persons regarded as undesirable, and lack of employment, were presumed adequate grounds for revocation of license, even though no overtly criminal action had been performed.

It is reported that the revocation of license was freely practiced, but such revocation was not final. "The nature of the misconduct is considered, the man is detained in prison for further term of probation as the case seems to require, and in the less serious cases he is again discharged on license."¹⁵ Crofton comments that such close supervision was strongly protested by the "ticket of license men" at first, but eventually accepted. He writes:

"It is quite evident that the stringent mode of procedure pursued in Ireland, both with regard to the enforcement of the terms of the Convict's license, and the systematic mode of registering his former convictions against him, thereby entailing upon him a lengthened sentence for his next offense, has been the means of conveying to his mind the difficulty of following crime as a vocation. As this mode of procedure is made intelligible to him when he commences his sentence, he is very generally disposed to co-operate in a course which will lead to his amendment."¹⁶

It should be noted that along with open identification of the ex-convict (the employer was required to know that he was hiring a "ticket of license man"), the prison authorities made every effort to persuade employers to give the man an opportunity to demonstrate his reformation. On the expiration of his original sentence, the convict

was restored to liberty, whether he had been released on ticket of license or was still in an earlier stage.

The Irish system of prison discipline contained elements which had not existed hitherto as essential parts of a prison regime. There was a definite attempt to make the prison more than merely an unpleasant experience presumed to deter crime. Crofton observed that the convict probably "has suffered mere penal infliction repeatedly, and has returned to prison more hardened than before. Punishment alone has failed to deter him."¹⁷ The Irish system included an effort to teach enjoyment of labor (above all in the first stage), habits of industry, and (especially in the second and third stages) self-restraint.

Crofton clearly assumed that habits and attitudes created in the prison could be extended into free life. However, he did not expect this to be an inevitable consequence of the program. On the contrary, the extent to which the convict had actually learned to be industrious and to resist temptation was tested in the semi-freedom of the un-walled, unguarded intermediate institution. The entire system of stages was conceived as a course in reformation, and Crofton had a better understanding of the importance of time in such a process than did his successors. A proponent of the system, W. L. Clay, wrote: "to apply the Irish version of the mark system to chance offenders would be a great mistake. Even were its probationary processes needed, there is no time for their operation. *The Irish system demands, at the very least, three years . . .*"¹⁸

The Irish system attracted very considerable attention in penological circles throughout the world. It served for some time as the model for reformatory development in other countries; however, it did not survive long in Ireland. It was first proposed in 1854, made possible by the Penal Servitude Act of 1857, and in 1895 F. H. Wines wrote that "the only place where the Irish system can now be found in its entirety is at Lepoglava, in Hungary, where it has been organized under Mr. Tauffer . . ."¹⁹ From the historical perspective, the significance of the Irish system is its influence on the reformatory movement in other countries, particularly its influence in the United States.

¹⁴ *Id.* at 10.

¹⁵ FOUR VISITING JUSTICES, *op. cit. supra* note 6, at 52.

¹⁶ CROFTON, *op. cit. supra* note 2, at 12.

¹⁷ *Id.* at 6.

¹⁸ CLAY, OUR CONVICT SYSTEMS 6 (London, 1862).

¹⁹ WINES, PUNISHMENT AND REFORMATION 191 (1895).

THE REFORMATORY MOVEMENT IN THE
UNITED STATES

The two most significant events in the early history of the reformatory in the United States were the Prison Congress of 1870 at Cincinnati, and the creation of the Elmira Reformatory in New York. There were, however, earlier stirrings of interest in the reformatory system. To a considerable extent, these early developments were motivated by the fame of the Irish system.

Perhaps the first concrete manifestation of the reformatory movement in the United States was the Ohio State Reform Farm, established in 1857 for minor males. This institution ultimately became the Ohio Industrial School for Boys. In 1865, Frank B. Sanborn, the inspector of prisons in Massachusetts, advocated to the General Court of that state "a system based upon the principles worked out by Maconochie and Crofton."²⁰

In the same year, Gaylord B. Hubbel made a study of the English and Irish prison systems and concluded, in an article printed in the *Twenty-Second Annual Report of the New York Prison Association*: "Can the Irish system be adopted to advantage in our own country? For my own part, I have no hesitation in returning an affirmative answer, with emphasis, to this question."²¹ He then proceeded to make concrete proposals, many of which directly anticipated basic elements of the Elmira system. It is not improbable that Brockway was influenced by these proposals of Hubbel.

In 1867, Dr. E. C. Wines, the secretary of the New York Prison Association, corresponded with Crofton and published an account of the Irish system. In a joint report to the New York Prison Association (with Theodore Dwight, the vice-president), he concluded:

"We have no hesitation in expressing the opinion that what is known and has become famous as the Irish system of convict prisons is, upon the whole, the best model of which we have any knowledge; and it has stood the test of experience in yielding the most abundant as well as the best fruits. We believe that in its broad, general principles—not, certainly, in all its details—it may be applied, with entire effect, in our own country, and in our own State."²²

The New York Prison Association urged the crea-

tion of an intermediate prison in New York, modeled on the reformatory plan.

The following year, 1868, the Board of State Charities of Ohio proposed to the legislature the establishment of an intermediate prison for young men to supplement the penitentiary and the Reform Farm and to create, in effect, a system of graded prisons. No action was taken on this recommendation, however, until 1885, nine years after the opening of Elmira in New York.

The act establishing the Elmira Reformatory was passed by the New York legislature in 1869, although the institution did not open until 1876. Also in 1869, Brockway secured the passage of an act in the Michigan state legislature which provided for "the conditional release and re-arrest, should need be, of both the juvenile and the adult female offenders, by the managing authorities of the house of correction."²³ This law was the first successful attempt to establish the indeterminate sentence in the United States. It was, however a restricted law which covered only a limited area and, according to Brockway, was "practically nullified after two or three years . . ."²⁴

These developments in the United States prepared the way for the first Prison Congress, which convened in Cincinnati in 1870. The new concept of reformatory prison discipline was presented with enthusiasm by the principal speakers, such as Wines, Byers, Sanborn, and Brockway. Sanborn recommended the introduction into the United States of the entire Irish system, and Crofton's intermediate prison received particular praise from others.

In view of Brockway's later role in the shaping of Elmira, his comments to the 1870 Congress are of particular interest. With regard to the emphasis on the prison as a reformatory mechanism, Brockway stated:

"It is true that the reformation of prisoners during their imprisonment is indispensable, for to return to society discharged prisoners unreformed is to poison it with the worst elements possible; and to retain them in prison indefinitely, while affording at the same time protection from their evil influence, would impose a burden impossible to be borne."²⁵

²³ BROCKWAY, FIFTY YEARS OF PRISON SERVICE: AN AUTOBIOGRAPHY 126 (1912).

²⁴ *Id.* at 127.

²⁵ Brockway, *The Ideal of a True Prison System for a State*, condensed from a paper presented to the 1870 Cincinnati Congress, in BROCKWAY, *op. cit. supra* note 23, app. 1 at 404.

²⁰ GILLIN, CRIMINOLOGY AND PENOLOGY 523 (3d ed. 1945).

²¹ Cited in WINES, *op. cit. supra* note 19, at 199 n.1.

²² *Id.* at 196.

Thus urged by its leaders, the Prison Congress of 1870 adopted a statement of principles in which reformation was recognized as the special purpose of punishment:

"The treatment of criminals by society is for the protection of society. But since treatment is directed to the criminal rather than to the crime, its great object should be his moral regeneration. Hence the supreme aim of prison discipline is the reformation of criminals, not the infliction of vindictive suffering."²⁶

The concrete manifestation of the Congress of 1870 was the planning of the Elmira Reformatory. This reformatory, which had been authorized by legislative action the year before, afforded the reformers the opportunity they sought. According to Wines, it was at the Prison Congress of 1870 that "the new prison system . . . was virtually created."²⁷ The importance of the Elmira Reformatory in the development of the reformatory in the United States derives in part from the fact that it embodied the spirit of the Congress of 1870. But more than this, it was the first real application of parole and the indeterminate sentence in the United States, and it became a model for most American reformatories.

The Elmira Reformatory

In 1876 the Elmira Reformatory was opened at last, and Brockway was appointed general superintendent. In addition to his role in the Prison Congress of 1870, Brockway had other early influence on the development of Elmira. He writes: "I had known of the progress of its establishment from the earliest inception, and in 1870 had inspected the plans at the instance of General Pilsbury, the building commissioner."²⁸ Moreover, Brockway was granted wide discretion in the conception of the institution in the bill which established Elmira. Brockway did not, however, obtain the fully indeterminate sentence which he believed to be the foundation of a truly reformative regime. Afraid that an absolutely indeterminate sentence would not be approved by the legislature, he added a limitation that the sentence should not be extended beyond the maximum term provided by law for a given crime.

Although the Elmira Reformatory opened in 1876, it was not until 1880 that it began to develop its distinctive features. Brockway explains this

lag as the result of several factors; the prison structure was not completed at the time the reformatory opened, many prisoners brought to Elmira from other state prisons were under definite sentence, and, moreover, Brockway was expected to provide income for current maintenance by prison labor. According to Brockway's statement, until 1880 "the reformatory differed only in name from a common, rough, state prison with an unusual percentage of exceptionally bad prisoners . . ."²⁹

The Elmira Reformatory had never been intended as a prison for youthful offenders or exclusively for first offenders, as has often been supposed. Like the Irish prisons, but unlike modern reformatories, Elmira differed little from other institutions in the type of prisoners it received. In Brockway's summation of his prison experience, *Fifty Years of Prison Service*, he states:

"This mass of prisoners at the reformatory neither was nor is composed of boys . . . They were and are adult males committed for felony. . . . The reformatory prisoners as to age and crimes are like the majority of prisoners in the state penitentiaries . . ."³⁰

The basic classification made among the prisoners at Elmira was a division into three grades. Those in the third grade lived entirely apart from prisoners of other grades, although not in solitary confinement. Men in the first grade lived apart to a certain extent, in that they were entitled to dine in special rooms where conversation was permitted and in other ways enjoyed a more permissive situation. On admission all prisoners were placed in the second, or middle grade. From this they could progress or retrogress, in accordance with their conduct as measured by an elaborate mark system. As Brockway describes the system:

"Briefly illustrated, acts grossly disregardful of the regulations caused a month or more of loss, or, if clearly criminous, canceled the previous advancement—carried backward, so that the path of progress must be retraced with better footing. Three demerits—misdemeanors—in any month, canceled temporarily, at least, that month's advance; and such demerits continued through three successive months spoiled all progress, as did the criminousness alone just mentioned. And as to neglects, ten neglect demerits in a month marred the progress to the same extent as did three misdemeanors."³¹

²⁶ As summarized by GILLIN, *op. cit. supra* note 20, at 523.

²⁷ WINES, *op. cit. supra* note 19, at 193.

²⁸ BROCKWAY, *op. cit. supra* note 23, at 156-57.

²⁹ *Id.* at 174.

³⁰ *Id.* at 213-14.

³¹ *Id.* at 317-18.

Admission to the first grade could be gained by six months of good behavior, and an additional six months of good conduct would generally entitle the prisoner to parole. Or, on the other side of the ledger, a breach of regulations was punished by demerits that could cancel previous progress and lead to segregation in the third grade. The prisoner who was moved to the third grade could be restored to the second by 30 days of perfect demeanor; his alternative was to remain secluded indefinitely from all except other prisoners of the same class. Brockway asserts that "as a matter of fact, few remain [in the third grade] over a month, and none beyond two or three."³²

The major means of discipline at Elmira was thus the mark system; in cases where such means were ineffectual, corporal punishment was used as a last resort. In 1883 a legislative investigating committee reported that "corporal punishment is inflicted in no other form than 'padding,' and is administered by no one but the superintendent . . . as a substitute for longer detention in the third grade."³³

After a prisoner had earned the right to apply for parole and was approved by the board, the period of parole was set. Brockway states that "the minimum parole period was fixed at six months, for the reason that a longer period would be discouraging to the average paroled man, and a shorter term insufficiently steady."³⁴

As the program of Elmira evolved in operation, increasing emphasis was placed on the school of letters, the school of trades, physical training, and military training. Brockway shifted emphasis to physical and military training when the industrial production of inmates was restricted by action of the legislature. The trades training program was expanded through the years, especially after the decline of actual industrial production.

The ideological foundation which underlay the administration of the Elmira Reformatory is expressed in the following passages in which Brockway states his conception of good reformatory administration:

"The principles of good reformatory administration should include:

a) Custody so secure that prisoners do not

³² *Extract from the Board of Managers' Report of 1904*, in *HANDBOOK OF THE NEW YORK STATE REFORMATORY AT ELMIRA 127* (1906).

³³ *REPORT OF LEGISLATIVE INVESTIGATING COMMITTEE, 1883*, cited in BROCKWAY, *op. cit. supra* note 23, at 330.

³⁴ *Id.* at 324.

occupy their minds with thoughts or plans for escape.

b) Control and management (within the law) by the constituted authority, without interference or 'influence' of outside persons. When the state undertakes the reclamation of criminals, benevolent societies and individuals rendering voluntary assistance, should serve under advice: the state is competent and responsible.

c) There must be a resident executive officer in full command, vested with good authority and wide discretionary power.

d) Subordinate officers and employees should be appointed and dismissed by such executive at his pleasure. They should be completely and exclusively under his control, and their functions should be limited to his direction.

e) The entire life of the prisoner should be directed, not left to the prisoner himself; all his waking hours and activities, bodily and mental habits, also, to the utmost possible extent, his emotional exercises. So thorough and rigorous should this be that unconscious cerebration, waking or sleeping, will go on under momentum of mental habits. There should be no time nor opportunity for the prisoner to revert to vicious characteristics."³⁵

It is interesting to note the similarities and differences between the reformatory program as developed in the Irish system and as later developed in the United States at Elmira. The features of the Elmira system borrowed from Crofton and from Maconochie before him are numerous and have been summarized by various writers, notably by the Gluecks and by Wood and Waite.³⁶ Some of the more basic and obvious borrowings include the attempt at use of the indeterminate sentence; a system of progressive stages; the classification of prisoners in terms of their prison conduct; the mark system; and conditional release on ticket of leave (or parole as it was known in the United States).

But while the similarities between the Irish Convict system and the Elmira Reformatory have often been noted, the differences have been neglected, and these differences involved some fundamental procedures.

(1) The limited period of solitary confinement practiced by Crofton, as a means of achieving

³⁵ Brockway, *Extract from Annual Report of 1900*, in *HANDBOOK OF THE NEW YORK STATE REFORMATORY AT ELMIRA 120-21* (1906).

³⁶ See WOOD & WAITE, *CRIME AND ITS TREATMENT 528-29* (1941); SHELDON & ELEANOR T. GLUECK, *500 CRIMINAL CAREERS 19-20* (1930).

(a) favorable relations between the prisoner and the administration before the convict was allowed to mingle with other prisoners and (b) a change in attitude through enforced idleness and reflection, was *entirely eliminated* from the Elmira program.

(2) The time allowed for the reformatory process to take place before the prisoner was eligible for parole was reduced from the three years which Crofton regarded as a minimum to a single year at Elmira.

(3) The feature of the Irish system which Crofton regarded as the most crucial—the intermediate prison in which the prisoner demonstrated his readiness for parole in the absence of physical restraints and direct coercion—*disappeared entirely* from the Elmira system. On the contrary, Brockway insisted that good reformatory administration should provide “custody so secure that prisoners do not occupy their minds with thoughts or plans for escape.”³⁷

Because the Elmira system was an adaptation of the Irish system, doubt might be cast on its chance of success by the failure to employ solitary confinement—a major device used by Crofton to effect changes in attitude, by the reduction of the time in which reformation could occur by two-thirds, and by elimination of testing of the prisoner’s reformation in a semi-free situation. Moreover, the Elmira system added no basic new elements which might have served to replace the lost or reduced procedures.

After Elmira

The initial period of the Elmira Reformatory was characterized by optimism. In 1885 Brockway wrote: “I am glad to be able to close my report with the declaration that never before in my long prison experience has the problem of reclaiming to society a large majority of convicted criminals seemed so probable of solution.”³⁸ Again, “new confidence came that, by means of prison science, most of the prisoners committed to the reformatory could and would be so changed in their habits and tastes as to become suitable inhabitants of a community.”³⁹

A survey made in 1888 of all ex-prisoners of the institution purported to prove that “after the severe test of endurance for so many years, 78.5 per cent lived self supporting and orderly lives.”⁴⁰

³⁷ Brockway, *supra* note 35, at 120–21.

³⁸ Brockway, *op. cit.* *supra* note 23, at 279.

³⁹ *Id.* at 306–07.

⁴⁰ *Id.* at 297.

At another time, Brockway estimated the per cent of those not returning to crime to be 81.9,⁴¹ but all these figures have been strongly challenged.

The early optimism faded, and toward the end of the nineteenth century Brockway wrote: “the excess of prisoners—the overcrowding—is largely the cause of what has these later years grown to be a very serious fault; namely superficiality and ineffectiveness of the reformatory regime, with premature and improper release of prisoners. . . .”⁴² And by 1900 there was a serious rift between Brockway and the board of managers, resulting in Brockway’s resignation.

When Brockway left Elmira, an era ended. Just as Elmira had been the prototype and symbol of the reformatory in the United States, so its decline reflected the decline of the early reformatory movement. Most of the reformatories in the United States were patterned on Elmira, and the features most copied were those least conducive to reform. The ideals of the progressive penologists of the nineteenth century never developed into an operative system, and whether or not they could have succeeded in actual practice is a matter of conjecture only. The experimental procedures of Maconochie, Jebb, and Crofton were compromised or diluted by Brockway and later were abandoned altogether. Most of the reformatory directors were trained in the repressive prison regime, and the reformatories became what Gillin has termed “junior prisons with the form but without the spirit of a real reformatory.”⁴³

In 1900, the International Penal and Penitentiary Congress was asked to endorse the American reformatory system, but the response was that the Congress “while taking into very serious consideration the organization of the reformatories of the United States of America,” had, nonetheless, concluded that “the results known up to the present time can not be regarded as sufficient to justify, without further study, the adoption of that organization in the countries of Europe.”⁴⁴ The advantages of hindsight allow us to recognize how appropriate these reservations were.

But there is one final twist in this curious history. One of the most promising contemporary reformatory movements—the English Borstal system—was inspired, at least initially, by the

⁴¹ *Id.* at 325.

⁴² *Id.* at 272–73.

⁴³ Gillin, *op. cit.* *supra* note 20, at 525.

⁴⁴ Teeters, *DELIBERATIONS OF THE INTERNATIONAL PENAL AND PENITENTIARY CONGRESSES: QUESTIONS AND ANSWERS* footnote at 109 (1949).

Elmira experiment. Sir Evelyn Ruggles-Brise, the founder of the first Borstal, "after his visit to Elmira and the Massachusetts Reformatory at Concord . . . returned to England and immediately set apart a specialized institution at Borstal . . . for male offenders between the ages of 16 and 21. Thus was born the famous Borstal System in England."⁴⁵

⁴⁵ BARNES & TEETERS, *op. cit. supra* note 1, at 547.

It is to be hoped that this twentieth century English importation of an American imitation of an Irish improvement on the English penal system of the middle nineteenth century will meet with greater success than did its ancestors. But whether or not there is progress, cultural diffusion continues: already the influence of the Borstal system is observable in the United States.