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THE HISTORICAL ORIGIN OF THE PRISON SYSTEM IN AMERICA[1]

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I. THE LATE ORIGINS OF PENAL INSTITUTIONS

There is an old and well-worn adage that "no prophet is without honor save in his own country," and it would seem fairly accurate to hold that the same sentiment may at times apply to prison systems and types of prison reform. While the writer was born within five miles of Auburn, New York, has passed by the Auburn prison hundreds of times, and visited it in a score of instances, it was not until years afterward, as a result of a historical study of penology, that he received the slightest intimation that it had any historical significance other than that which might attach to any prison structure which could point to an existence of a century. Further, it may be doubted if there are a half dozen citizens of the city of Auburn who realize that the somber gray stone walls, surmounted by the stolid figure of "Copper John," enclose a structure that, with one possible exception, is, historically considered, the most important penal institution in the western hemisphere, if not in the world—one which furnished the architectural and administrative pattern for an overwhelming majority of the prisons of the United States, and was visited and studied by the leading penologists and jurists of every important European country during the first half of the last century. It will be the purpose of this paper briefly to indicate the historical background and origins of the Pennsylvania and Auburn systems of prison administration and their influence upon contemporary penology. In view of the limited space at my disposal it has seemed best to omit most details of local antiquarian interest and thereby make possible the treatment of the much more vital general historical circumstances which combined to produce these important types of prison discipline.

The prison, viewed as an institution for detaining men against their will, originated in the most remote antiquity. It probably goes back as far as the time of the general practice of cannibalism, when

[1]Paper read before the annual meeting of the New York State Historical Society at Bear Mountain Park, October 7, 1920.

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future victims were held in stockades to be fattened or to await their turn in contributing the chief course in the menu of their captors.[3] Throughout recorded history one frequently meets with references to prisons used for the confinement of political and religious offenders,[4] but the prison system of today, which is the agency through which imprisonment is made the mode of punishment for the majority of crimes, is an innovation of relatively recent origin.[5] It is quite impossible to fix the exact date of the general beginning of imprisonment as a punishment for crime, and it may, indeed, be seriously doubted if any such date exists, except in a metaphysical sense. All that can be stated with accuracy is that at the beginning of the eighteenth century imprisonment was unusual, except as applied to political and religious offenders and debtors, while before the middle of the nineteenth century it was the conventional method of punishing crime in both Europe and America. The eighteenth century was the century of transition from corporal punishment to imprisonment, and, though the process of change was most rapid after 1775, there can be no doubt that the general movement was in progress during the entire period.

During the Colonial period there were two institutions in existence, the combination of which later produced the modern prison. They were the jails, or prisons of the time, and the workhouses. The jails or prisons were chiefly used for the detention of those accused of crime pending their trial and for the confinement of debtors and religious and political offenders. They were rarely used for the incarceration of what were regarded as the criminal classes. At each session of the court there occurred what was called a "gaol delivery," when the jail was practically emptied of its inmates, only to be filled again during the interval between the delivery and the next session of the court. Only political and religious offenders, debtors, and the few criminals who had received the rare penalty of imprisonment, remained in the jails or prisons longer than the period which elapsed between successive sessions of the courts. The workhouses, on the other hand, which began to appear about the middle of the sixteenth century, and reached their highest early development in Holland, were not for more than two centuries after their origin penal institutions in any strict sense of the word. They were utilized almost solely to repress

[3]Cf. P. A. Parsons, *Responsibility for Crime*, pp. 95ff.

[4]F. H. Wines, *Punishment and Reformation*, pp. 107ff; E. C. Wines, *State of Prisons and Child Saving Institutions*, pp. 1-67; A. C. Hall, *Crime In Its Relation to Social Progress*.

[5]Wines, *Punishment and Reformation*, pp. 117ff.

vagrants and paupers and were not open for the reception of felons.[6]

It was the great contribution of the West Jersey and Pennsylvania Quakers to the development of modern penology to have produced the two-fold achievement of substituting imprisonment for corporal punishment in the treatment of criminals and of combining the prison and the workhouse. In other words, they originated both the idea of imprisonment as the typical mode of punishing crime, and the doctrine that this imprisonment should not be in idleness but at hard labor. Of the priority of their accomplishment in this regard there can be no doubt. A century later they added the principle that imprisonment at hard labor should be in cellular separation, and thus created a modern prison system in its entirety.[7]

II. The Nature of the Criminal Codes and Types of Punishment in the Colonial Period

1. *General Nature of European and American Criminal Jurisprudence in the Eighteenth Century.*

In order to form a critical estimate of the nature and development of the criminal codes of Colonial New York it is essential to review briefly the general status of European and Colonial criminal jurisprudence down to the last quarter of the eighteenth century. Two tendencies stand out conspicuously—an extreme severity in the penalties prescribed and the almost exclusive employment of fines or some form of corporal punishment as the prevailing mode of executing the penalty imposed. A much larger number of crimes were then specified as capital offenses than is the case at the present time, though the situation was not as bad as it became in England a century later, when between two hundred and fifty and three hundred crimes were listed as capital. In the case of crimes not capital, some form of corporal punishment milder than death was usually inflicted. Whipping, branding, mutilating, confinement in the stocks or pillory, and "ducking" were among the most popular of these forms of punishment. At this same time the practice was beginning of banishing offenders to the colonial districts, a procedure which became so popular in the eighteenth century and in the first half of the nineteenth. Until the outbreak of the Revolutionary War the American colonies were the main destination of the banished criminals of England, but after 1776

[6]Wines, op. cit., chap. vi. George Ives, *A History of Penal Methods*, chap. i.

[7]H. E. Barnes, *History of the Penal, Reformatory and Correctional Institutions of New Jersey*, pp. 32-5, 41-2, 86-93, 432-3.

America was superseded by Australia. In view of these modes of inflicting punishment for crimes, it readily becomes apparent that there was little need for the modern prison system. At this time the jails were used chiefly for the detention of those accused of crime who were awaiting their trial, and the majority of those confined in the prisons of the time were debtors and political and religious offenders.[8]

At the close of the seventeenth century the barbarous English criminal code was in force in varying degrees in all of the English colonies in America, with the sole exception of the Quaker colonies of West Jersey and Pennsylvania. The American adaptation of the code of the mother country was never as extreme as the English code. The notorious "Blue Laws" of Connecticut, adopted in 1642 and 1650, provided for but fourteen capital crimes. The Hempstead Code promulgated at Hempstead, Long Island, on March 1, 1665, and introduced into New York as the Duke of York's laws, enumerated eleven capital offenses.[9] Though these American Puritan codes compare very favorably with the practice of the mother country, they present an unenviable contrast to the mild and humane Quaker codes of West Jersey and Pennsylvania. In the former only treason and murder were capital offenses and in the latter murder alone was punishable by death. Imprisonment at hard labor was prescribed in most cases for non-capital crimes.[10] While the Quaker codes did not long remain in force in either colony, it is probable that the influence of these Quaker laws and theories did more than anything else to promote that movement for the liberalizing and humanizing of the criminal codes in this country, which began immediately after the Revolution and spread from Philadelphia throughout the states.[11] This Quaker influence, growing out of the revulsion of the Friends against the bloody juristic practices of the day, from the beginning operated mainly along two related lines of reform—the reduction of the number of capital crimes and the substitution of imprisonment at hard labor for corporal punishment as the most satisfactory penalty to be imposed for the commission of crimes other than capital.[12]

[8]F. H. Wines, *Punishment and Reformation,* chaps. v-vi. George Ives, *A History of Penal Methods,* chap. i. Maurice Parmelee, *Criminology,* pp. 357-72. J. F. Stephen, *A History of the Criminal Law of England,* especially Vol. I, chap. xiii.

[9]*The Public Records of the Colony of Connecticut,* Vol. I, pp. 509ff. *The Charter and Laws of Pennsylvania,* 1682-1700. pp. 14-15. *Colonial Laws of New York,* Albany, 1894, J. B. Lyon, Vol. I, pp. 6ff.

[10]Leaming and Spicer, *The Grants, Concessions and Original Constitutions of the Province of New Jersey,* pp. 382-411. *Charter and Laws of Pennsylvania,* pp. 107ff.

[11]Wines, op. cit., pp. 142f., 147, 344.

[12]Ibid. Barnes, op. cit., pp. 32-5, 38-42, 60, 87-8.

2. *The Criminal Code of Colonial New York.*

The situation as respects crimes and punishments in the colony of New York did not differ materially from that which existed in the colonies at large before the Revolution. As late as the Act of 1788 for "punishing Treasons and Felonies, and for the better regulating of proceedings in cases of Felony," there were sixteen capital crimes enumerated on the statute books—treason, murder, rape, buggery, burglary, robbery of a church, breaking and entry, robbery of person, robbery and intimidation in dwelling houses, arson, malicious maiming, forgery, counterfeiting, theft of chose in action, second offense for other felonies, and aiding and abetting any of the above crimes.[13] During the earlier colonial period there has been a number of other crimes punishable by the death penalty, such as, for example, heresy, perjury, smiting of a parent, adultery of married persons, piracy and flight from servitude.[14] Where the death penalty was not inflicted corporal punishment of another and less severe type was employed. The stocks, pillory, whipping, branding and the ducking-stool were the normal methods used for imposing punishment. For the lesser offenses fines were prescribed, with an alternate sentence of corporal punishment if the fine was not paid. Imprisonment was rarely employed as a method of punishment. Nearly all who were imprisoned for any considerable period of time were debtors, imprisonment for debt not having been abolished in New York State until the laws of April 7, 1819, and April 26, 1831, were passed, the latter in part as a result of the campaign against imprisonment for debt carried on by Louis Dwight of the *Boston Prison Discipline Society*.[15] The great bulk of all others who were confined were those who were charged with the commission of a crime and were held pending trial at the next session of the court. Yet, even the expense of imprisonment while awaiting trial was deemed too great, the jails too frequently proved unequal to the task of safe confinement, and the families of the accused became public burdens. This led to the passage of the laws of October 14, 1732, November 10, 1736, and September 1, 1744, which authorized magistrates to prescribe corporal punishment for those charged with minor offenses if they could not furnish bail within

[13]*Laws of the Colony of New York,* 1788, chap 37, sec. 1, Greenleaf Edition, 1792, Vol. II, pp. 78-79.

[14]Laws of the Colony of New York, 1665, 1699, 1745, 1756. For a good summary of the situation see Philip Klein, *Prison Methods in New York State,* chap. i.

[15]Cf. Frank Carleton, "The Abolition of Imprisonment for Debt in the United States," *Yale Review,* Vol. XVII, pp. 338-344.

forty-eight hours after arrest.[16] The use of imprisonment as a method of punishing crime made but very slow and partial progress in the colony of New York. It first appeared in relation to the offense of "barratry," made punishable by fine or imprisonment in the law of 1665.[17] The first step of any significance came in Chapter 31 of the laws of 1788, which prescribed imprisonment for disorderly conduct, but the true beginning of the use of imprisonment as a method of punishing crime may be dated from the passage of the act of March 26, 1796, passed on the basis of the recommendations of Governor John Jay, General Philip Schuyler, Thomas Eddy, and Ambrose Spencer, and drawn from a study of the contemporary reforms in the adjoining state of Pennsylvania.[18]

III. The Origins of the Prison System in New York State

1. *General Historical Background of Penal and Juristic Reform.*

There are two sets of influences which constitute the chief phases of the historical background of prison reform in New York, namely, those general forces making for reform and progress of all kinds in the eighteenth century, and those specific attempts to reform criminal jurisprudence and penal administration during the same period, which center mainly about the writings and activities of Beccaria and Howard and the Pennsylvania reformers, such as Bradford, Rush, Vaux, Lownes, and others.

The ignorance, crudities, and barbarism of the "old régime" in Europe were effectively attacked in the writings of the French *Philosophes,* such as Montesquieu, Voltaire, Diderot, Turgot and Condorcet and of their English sympathizers and associates like David Hume, Adam Smith, Tom Paine and Jeremy Bentham. The assault on the old order in the work of these publicists was given concrete and objective form in the French Revolution, and its effect upon the other states of Europe. Probably the most important of the doctrines of these writers and of the Revolutionary period was the introduction of rationalism into social and political philosophy and the firm conviction that social progress and the resulting "greatest happiness for the greatest number" were possible of attainment through sweeping social reforms carried out according to the dictates of "pure reason." It is

[16] *Colonial Laws of New York,* Albany, 1894, Vol. II, pp. 745-6, 920; Vol. III, pp. 377-9.

[17] Ibid., Vol. I, p. 17.

[18] *Laws of the State of New York,* 1776-1797, Greenleaf Edition, 1792, Vol. II, pp. 52-54; Vol. III, pp. 291-99.

obvious that so barbarous and archaic a part of the old order as the current criminal jurisprudence and penal administration of the time could not long remain immune from the growing spirit of progress and enlightenment.[19] America, in general, and Philadelphia, in particular, were well situated to feel the effect of these new forces. A large number of Frenchmen had been in America during the Revolutionary War, had brought with them many of the ideas of their publicists and had stimulated an American interest in French thought. In addition, many of the more important and influential Americans had been in Europe during the period of the American Revolution and the years immediately following. Philadelphia, as the real center of American civilization and political life during the last quarter of the eighteenth century, was particularly affected by these progressive European developments. Benjamin Franklin had long been a resident of France and was well acquainted with radical French thought. The political leaders who assembled in Philadelphia during the period were all more or less familiar with the advanced political thought of England and France. No other foreign philosopher so influenced the American Constitutional Convention of 1787 as did Montesquieu, and his exponents must have been nearly as familiar with his doctrines on the reform of criminal jurisprudence as with his theory of the separation of governmental powers. As the capital of the country during much of the period, Philadelphia received many distinguished foreign visitors, bringing with them the doctrines of their countrymen. Brissot, the Girondist leader in the French Revolution, was among these. Finally, it was to Philadelphia that Jefferson came shortly after his return from France, where he had become most familiar with French revolutionary ideas and leaders. Then Philadelphia had the colonial precedents of Penn in prison reform to recur to as an inspiration and guide in juristic and penal reform. All of these conditions combined to make Philadelphia particularly well adapted to the carrying into execution of some of the more radical European and Colonial programs of social reform.[20]

[19]See John Morley's biographies of Rousseau, Diderot and Voltaire and his essays on eighteenth century thought in France in his *Critical Miscellanies;* A. Sorel's biography of Montesquieu; H. Higgs, *The Physiocrats;* J. M. Robertson, *A History of Free Thought;* Leslie Stephen, *History of English Thought in the Eighteenth Century;* and the excellent summary of the writings and thought of this period in Robinson and Beard, *Development of Modern Europe,* Vol. I, pp. 157-82, and the *Cambridge Modern History,* Vol. VIII, Chap. I.

[20]On the interrelation between early American and European thought see I. Woodbridge Riley, *American Philosophy, the Early Schools.*

2. *The Attack on the Older Criminal Jurisprudence and Criminal Procedure.*

Powerful and successful attacks were made upon the barbarous and irrational criminal jurisprudence and penal institutions by a group of able and influential European writers. The French publicist, Montesquieu (1689-1755), in his *Persian Letters* and his *The Spirit of the Laws,* condemned the barbarous injustice of the French penal code and advocated reforms which would make punishments less severe and more nearly adapted to the specific crimes for which they were imposed. His work attracted and stimulated a more influential writer in the history of the reform of criminal jurisprudence, the Italian, Beccaria (1735-94). His *Crimes and Punishments,* first published in 1764, was probably the most significant single contribution of the eighteenth century to the reform of criminal jurisprudence. He argued powerfully for the abolition of torture, the need of a more just and accurate method of trial, the necessity for a reduction in the severity of the penalties imposed, a larger use of imprisonment in the punishment of crime and an improvement in the administration of prisons. The greater portion of his work, however, was directed primarily toward securing a reformation of contemporary criminal law.[21] The English jurist, Blackstone (1723-1780), while not violent enough in his criticism of the old system to please Bentham, condemned the glaring injustices in the unspeakable English criminal code of his day. The multitudinous and diverse reforming interests of Jeremy Bentham (1748-1832) embraced voluminous writings on the reform of both criminal jurisprudence and penal administration.[22] Finally, many of the most important of the doctrines of the reformers were given concrete expression in the French Revolutionary penal code of September 25, 1791, which declared that "penalties should be proportioned to the crimes for which they were inflicted, and that they are intended not merely to punish, but to reform the culprit." All of these developments towards securing a new and more rational and humane criminal jurisprudence were well known to intelligent citizens of Philadelphia before 1800.

3. *John Howard and the European Origins of Prison Reform.*

The first clear anticipations of the modern prison system were the papal prison of San Michele, erected in Rome by Pope Clement X

[21]M. Parmelee, *The Principles of Anthropology and Sociology in Their Relation to Criminal Procedure,* pp. 10-16, 202.

[22]On Bentham, see W. L. Davidson, *Political Thought in England, the Utilitarians,* pp. 107-113.

about 1704, and the prison at Ghent in Belgium, established by Hippolyte Vilain XIII in 1773. In both of these there was provided some sort of classification and cellular separation of inmates. Labor by the inmates was the rule and reformation was stated to be a chief aim of incarceration. Neither of these prisons, however, attracted much general attention in England or America until their virtues were discovered and reported by the distinguished English prison reformer, John Howard (1726-90). In his travels of inspection between 1773 and 1790 he visited these institutions several times and his writings contain vivid descriptions of their construction and administration. It was through his writings, well-known to Philadelphians, that America gained a knowledge of these advanced institutions and caught the spirit of Howard's labors in behalf of prison reform. There is little or no evidence, however, that these institutions in Rome and Ghent directly influenced Pennsylvania penology to an appreciable degree. Their effect seems to have been indirect. Howard's recommendation of their system of administration, as a part of his penal philosophy, induced a number of enterprising and sympathetic English reformers to adopt these principles in English jails and prisons, and the latter became the models followed by the Philadelphia reformers. When, in 1790, the members of the *Philadelphia Society for Alleviating the Miseries of Public Prisons* desired to educate and inform the legislature of the state in order to secure the adoption of an advanced system of prison administration, their list of successful experiments in the new penology did not include any important reference to Rome or Ghent, but was confined almost entirely to the reforms in new English county prisons, particularly that at Wymondham in Norfolk, erected about 1784 by Sir Thomas Beevor, as a result of the enthusiasm generated by a reading of Howard's writings. In this prison there were provided a separation of sexes and of hardened criminals from first and petty offenders, separate cells for all prisoners at night and for incorrigible prisoners at all times, and a well-equipped workshop for the employment of the able-bodied prisoners.[23]

Beyond this indirect influence of Howard's work upon Philadelphia prison reform, ample evidence exists that the Philadelphia reformers were thoroughly conversant with the printed accounts of his travels in the inspection of prisons and with his recommendations of reform based upon these trips. The above-mentioned pamphlet of 1790 contains long extracts from Howard's works which were in ac-

[23]*Extracts and Remarks on the Subject of the Punishment and Reformation of Criminals.* Published by Order of the Society Established in Philadelphia for Alleviating the Miseries of Public Prisons, February 25, 1790.

cord with the changes urged upon the legislature. Two years earlier, in fact, the society had sent Howard the following letter:

Philadelphia, January 14, 1788.

To John Howard.

The Society for Alleviating the Miseries of Public Prisons, in the city of Philadelphia, beg leave to forward to you a copy of their constitution, and to request, at the same time, such communications from you upon the subject of their institution, as may favour their designs.

The Society heartily concur with the friends of humanity in Europe, in expressing their obligations to you for having rendered the miserable tenants of prisons the objects of more general attention and compassion, and for having pointed out some of the means of not only alleviating their miseries, but of preventing those crimes and misfortunes which are the causes of them.

With sincere wishes that your useful life may be prolonged, and that you may enjoy the pleasure of seeing the success of your labours in the cause of humanity, in every part of the globe, we are, with great respect and esteem, your sincere friends and well wishers.

Signed by order of the Society,

WILLIAM WHITE, President.[24]

This letter, written less than a year after the formation of the society, would seem to indicate that even in its origin it was powerfully stimulated by Howard's work. Indeed, we know that at the fourth meeting of the society the members listened to a letter from Dr. Lettsom of London describing Howard's journeys on the continent in carrying on his investigation of prison conditions.[25] That Howard evinced a similar interest in progressive movements in this country is shown by the words of the following memorandum which he dictated:

Should the plan take place during my life of establishing a permanent charity under some such title as that at Philadelphia, viz: "A Society for Alleviating the Miseries of Public Prisons," and annuities be engrafted thereupon, for the above mentioned purpose, I would most readily stand at the bottom of a page for five hundred pounds; or if such society shall be instituted within three years after my death, this sum shall be paid out of my estate.[26]

Along with the influence of Howard's work, it is evident that Jeremy Bentham's *Panopticon* and its voluminous appendices, published following 1787, had some effect upon prison reform in Pennsylvania. The Western Penitentiary of Pennsylvania, authorized by

[24]Robert Vaux, *Notices of the Original and Successive Attempts to Improve the Discipline of the Prison at Philadelphia and to Reform the Criminal Code of Pennsylvania,* Philadelphia, 1810, pp. 24-5.

[25]Ibid., pp. 18-20.

[26]Ibid., p. 25, note. *The London Society for the Improvement of Prison Discipline* was not established until 1815.

the law of 1818, is one of the few institutions which were modelled to some degree after Bentham's ingenious plan for a perfect prison structure.[27] Finally, in concluding this summary of the historical background of early prison reform in Philadelphia, the fact must not be forgotten that Pennsylvania, alone of all the states, was fortunate enough to have had its very origins linked up with the cause of judicial and penal reform. While the laws passed in Pennsylvania from 1718 to 1775 were usually about as far as possible from Penn's actual program, the memory of his purposes was kept alive in the enacting clauses. Therefore, when a reform of the criminal code and penal administration became necessary, the movement was rendered respectable and "safe" through its association with the venerable and esteemed name of the founder of the province.[28]

4. *The Pennsylvania System of Prison Discipline as the Model for Imitation by New York State.*

Inasmuch as it is undeniable that the advances in criminal jurisprudence and penology in New York State between 1796 and 1830 were primarily the result of New York's imitation of the Pennsylvania precedent, it will be necessary to review briefly the progress made in this adjoining state during the same general period. The beginnings of prison reform in Pennsylvania are generally associated with the name of Richard Wistar, a member of the Society of Friends, who, just prior to the outbreak of the Revolutionary War, was attracted by the abject misery of the inmates of the provincial jail in Philadelphia, some of whom had in fact recently starved to death. Wistar had soup prepared at his own house and then taken and distributed among the inmates of the jail. Others became interested in the situation and, on February 7, 1776, there was formed *The Philadelphia Society for Assisting Distressed Prisoners.*[29] The reform of the criminal code and the introduction of the prison system might have begun at that date instead of a decade later had not the British occupation of the city put an end to the activities of the society.[30]

Immediately after the peace of 1783 a number of prominent citizens of Philadelphia, led by Benjamin Franklin, Benjamin Rush,

[27] *Acts of the General Assembly of Pennsylvania*, 1820-21, p. 181.

[28] The most valuable summary of the rise of prison reform in Europe and the development of that movement in America is contained in the now rare monograph by J. B. Lindsley, *Prison Discipline and Penal Legislation*, Nashville, 1874. A copy exists in the New York Public Library.

[29] Roberts Vaux, *Notices*, pp. 8-9; *Sketch of the Principal Transactions of the Philadelphia Society for Alleviating the Miseries of Public Prisons*, Philadelphia, 1859, p. 3.

[30] Roberts Vaux, *Notices*, p. 9; *Sketch of Principal Transactions*, p. 3.

William Bradford and Caleb Lownes, organized a movement for the reform of the barbarous criminal code of 1718, which was still in force. All were agreed that the number of capital crimes should be greatly reduced and Dr. Rush went as far as to advocate the total abolition of the death penalty. Their efforts resulted in the law of September 15, 1786, which substituted for the death penalty as a punishment for some of the lesser felonies "continuous hard labor, publicly and disgracefully imposed."[31] The results of the new law were not as satisfactory as had been anticipated, while the public exposure of the convicts in their labor brought their distressing condition before the attention of a larger number of persons than could have been the case when they were secluded in the gloomy jails of High and Walnut streets. The continued evils of the penal administration, together with the added publicity given to these deplorable conditions, promoted the formation of *The Philadelphia Society for Alleviating the Miseries of Public Prisons,* on the 8th of May, 1787, in the German School House on Cherry street.[32] This organization, the first of the great modern prison reform societies, set forth its fundamental impulses, conceptions and purposes in the preamble to the constitution of the society—

"I was in prison and ye came unto me.

". . . and the King shall answer, and say unto them, verily I say unto you, inasmuch as ye have done it unto one of the least of these my brethren, ye have done it unto me" (Matthew, xxv:36, 40).

When we consider that the obligations of benevolence, which are founded on the precepts and example of the Author of Christianity, are not cancelled by the follies and crimes of our fellow-creatures; and when we reflect upon the miseries which penury, hunger, cold, unnecessary severity, unwholesome apartments, and guilt (the usual attendants of prisons), involve with them; it becomes us to extend our compassion to that part of mankind, who are subjects to these miseries. By the aids of humanity, their undue and illegal sufferings may be prevented; the links which should bind the whole family of mankind together, under all circumstances, be preserved unbroken; and such degrees and modes of punishment may be discovered and suggested, as may, instead of continuing habits of vice, become the means of restoring our fellow-creatures to virtue and happiness. From a conviction of the truth and obligation of these principles, the Subscribers have associated themselves under the Title of *The Philadelphia Society for Alleviating the Miseries of Public Prisons.*[33]

[31] *Statutes at Large of Pennsylvania,* Vol. XII, pp. 280-81. Caleb Lownes, *An Account of the Alteration and Present State of the Penal Laws of Pennsylvania,* Philadelphia, 1792, pp. 5-6.

[32] Lownes, op. cit., *Report of the Commissioners on the Penal Code,* 1828, p. 13.

[33] Roberts Vaux, *Notices,* pp. 10-11.

While not more than one-half of the members of the Society can be identified as also belonging to the Society of Friends, it is well known that the most active element in the prison reform organization was constituted by the Friends, and the leading exponents of the Pennsylvania system of prison discipline during over a half century, Roberts Vaux and his son, Richard, were members of the Society of Friends. Of course, one must recognize the important part played in the reform activity by non-Quaker members of the society, such as Bishop White of the Episcopal Church, and the generous co-operation with the Prison Society on the part of those who were not members of the newly formed society, such as Benjamin Franklin and William Bradford. The work accomplished by the reform society fell into three related parts—the relief of the physical suffering of prisoners, the reform of the criminal code in reducing the number of capital crimes and in introducing imprisonment as the typical method of punishment in the place of corporal punishment, and the development of a great historic system of prison discipline—the Pennsylvania or *separate* system of confinement and discipline.

It has already been pointed out that the activities in Europe of Howard and Bentham were intimately related to the development of the reform of prison administration in Pennsylvania; it is equally certain that the reform of the criminal code of the state was based upon a sympathetic reception of the juristic principles of Beccaria and Montesquieu. Writing in 1793 William Bradford, the author of the improved Pennsylvania codes from 1790-1794, indicates the indebtedness of himself and his associates to these European reformers:

> We perceive that the severity of our criminal law is an exotic plant, and not the native growth of Pennsylvania. It has endured, but I believe, has never been a favorite. The religious opinions of many of our citizens were in opposition to it; and, as soon as the principles of Beccaria were disseminated, they found a soil that was prepared to receive them. During our connection with Great Britain no reform was attempted: but, as soon as we separated from her, the public sentiment disclosed itself and this benevolent undertaking was enjoined by the constitution. This was one of the first fruits of liberty and confirms the remark of Montesquieu, "That as freedom advances, the severity of the penal law decreases."[34]

The legal beginnings of the reform of the Pennsylvania criminal code date back to the state constitution of 1776, which directed a reform of the criminal law to the end that imprisonment at hard and

[34]William Bradford, *An Inquiry How Far the Punishment of Death Is Necessary in Pennsylvania, With Notes and Illustrations,* Philadelphia, 1793, p. 20.

productive labor might be substituted for the barbarous existing methods of corporal punishment.[35] The stress of the Revolutionary War postponed action for a decade, but the law of September 15, 1786, marked a notable step in advance by reducing the number of capital crimes, substituting imprisonment for corporal punishment in the case of a number of lesser felonies, and by abolishing for most purposes branding, mutilation, the pillory, whipping and the other conventional barbarities of the colonial period.[36] The progressive policy was sustained and somewhat extended in acts of 1788, 1789, 1790 and 1791, but the systematic revision of the criminal code appeared in the act of April 22, 1794, which abolished the death penalty for all crimes except murder in the first degree, and substituted imprisonment or fines for all other crimes in the place of corporal punishment of any type.[37] This code marked the first important American break with contemporary juristic savagery, was the forerunner of the reform codes of other American states, and was the essential basis of Pennsylvania criminal jurisprudence until the next systematic revision in 1860.

This reform of the criminal code making imprisonment the normal method of punishing crime necessitated the establishment of a prison system in the place of the crude arrangement of the colonial jails and workhouses. By acts of 1789, 1790 and 1794 the Walnut street jail was converted into a state prison, and an addition was constructed so as to allow the trial of what became the Pennsylvania system of prison discipline, namely, the confinement of the worst type of felons in separate cells.[38] Of these important laws the act of April 5, 1790, is conventionally regarded as the legal origin of the Pennsylvania system. In spite of promising beginnings in the years immediately following 1790, the attempt to apply the new penology in the Walnut street jail proved a well-nigh complete failure. The cells erected for the solitary confinement of the "more hardened and atrocious offenders," according to the act of 1790, were never numerous enough to accommodate all the convicts of this class, and the large congregate cells or rooms which housed the remainder became so overcrowded as to nullify completely all attempts to administer the institution in a scientific or effective manner.[39] The failure of the law of

[35] *Constitution of Pennsylvania*, 1776, Chapter II, Sections 38-39.
[36] *The Statutes at Large of Pennsylvania*, Vol. XII, pp. 280ff.
[37] Ibid., Vol. XV, pp. 174-181.
[38] Ibid., Vol. XIII, pp. 246, 250-51; Ibid., pp. 523-5; Ibid., Vol. XV, pp. 178-9.
[39] *A Statistical View of the Operation of the Penal Code of Pennsylvania*, 1817, passim; Lownes, op. cit., pp. 12-13, 19ff.

1790 to secure the solitary confinement of those so sentenced and the general administrative and disciplinary demoralization of the Walnut street jail, due to overcrowding, were remedied from a legal point of view by the acts of March 3, 1818, and March 20, 1821, which provided for the erection of the Western and the Eastern State penitentiaries. It was here definitely stipulated that both penitentiaries should be constructed according to the principle of solitary confinement, but no provision was made for the employment of the convicts.[40] It was only after a series of controversies from 1826 to 1829 that the completed Pennsylvania system was finally established. By taking advantage of conflicting recommendations made by public authorities, *The Philadelphia Society for Alleviating the Miseries of Public Prisons* was able to induce the legislature to enact into law its fundamental program in penal administration—solitary confinement at hard labor. This was finally and definitely prescribed in the law of April 23, 1829.[41]

The classical eulogy of the Pennsylvania system is to be found in the report of the Inspectors of the Western Penitentiary for 1854. Here they worked themselves into an almost Neo-platonic ecstacy in their effort to set forth the many and numerous points of supreme excellence in the Pennsylvania system of prison discipline and administration. This is probably the most extreme and exaggerated praise that the system ever received from its advocates:

> Pennsylvania, the precursor of all her sister states in the present system of prison discipline, has justified its wisdom before the world in the practical results of its successful administration in this institution. Anticipated evils, existing more in speculative humanity and morbid philanthropy than in substantive fact, have failed in their realization. Disease and mental imbecility so confidently predicted as necessarily incident to separate confinement, have resulted in health and intellectual improvement. Depraved tendencies, characteristic of the convict, have been restrained by the absence of vicious association, and in the mild teaching of Christianity, the unhappy criminal finds a solace for an involuntary exile from the comforts of social life. If hungry, he is fed; if naked, he is clothed; if destitute of the first rudiments of education, he is taught to read and write; and if he has never been blessed with a means of livelihood, he is schooled in a mechanical art, which in after life may be to him the source of profit and respectability. Employment is not toil nor labor weariness. He embraces them with alacrity, as contributing to his moral and mental elevation. They help to fill the zodiac of his time, which would otherwise be spent in unavailing complaint, and fruitless importunity for re-

[40] *Acts of the General Assembly of Pennsylvania,* 1817-18, pp. 138-40; Ibid., 1820-21, pp. 94-7.

[41] Ibid., 1828-9, pp. 351-54.

lease. Shut out from a tumultous world, and separated from those equally guilty with himself, he can indulge his remorse unseen, and find ample opportunity for reflection and reformation. His daily intercourse is with good men, who, in administering to his necessities, animate his crushed hopes, and pour into his ear the oil of joy and consolation. He has abundance of light, air, and warmth; he has good and wholesome food; he has seasonable and comfortable clothing; he has the best of medical attendance; he has books to read, and ink and paper to communicate with his friends at stated periods; and weekly he enjoys the privilege of hearing God's holy word expounded by a faithful and zealous Christian minister.

Thus provided, and anxiously cared for by the officers of the prison he is in a better condition than many beyond its walls guiltless of crime. He labors, but it is for his subsistence, like any other member of the community, and by his industry he relieves that community of the burden of his support.

It is a fact worthy to be remembered by the Legislature, that for the last ten years, not one county sending convicts to the Western Penitentiary has been called upon to contribute a solitary dollar towards their subsistence. Such being the domestic economy of this institution, and such its happy results, we are not required to enter into an elaborate vindication of the principle upon which it is based. The system has disappointed the anticipations of its enemies and surpassed the confident expectations of its friends, and there, for the present, we leave it.[42]

5. *The Beginnings of Prison Reform in New York State and the Origins of the Auburn System.*

The situation in New York State after the Revolution with respect to criminal jurisprudence and penology was much the same as that which existed in Pennsylvania. The list of capital crimes was extensive and corporal punishment was the normal mode of inflicting the revenge of society upon the offender. Imprisonment as a method of punishing crime scarcely existed and no state prison had been provided. Yet progressive and enlightened individuals were not lacking who were gravely shocked by existing conditions and were keenly interested in all proposals for improving the situation. Among the leaders of enlightened sentiment in this respect in New York were Ambrose Spencer (1765-1848), legislator and jurist; Philip John Schuyler (1733-1804), soldier and statesman; Thomas Eddy (1758-1827), financier and philanthropist; DeWitt Clinton (1769-1828), political leader and social reformer; John Jay (1745-1829), statesman, jurist and diplomat, and John Griscom (1774-1852), scholar and philanthropist.

[42] *Report of the Inspectors of the Western Penitentiary,* 1854, *Legislative Documents,* 1854, p. 271. For a vigorous criticism of the Pennsylvania system see George Ives, *History of Penal Methods.*

The historical origin of the Pennsylvania system is treated in detail in the writer's forthcoming work on *The Evolution of Penology in Pennsylvania.*

It was but natural that their attention would be attracted by previous and contemporary progress in Philadelphia. The Philadelphia group had not only taken the lead in this movement in America, but had also spared no pains in advertising its program. Roberts Vaux notes that as early as 1794 the prison society resolved to make its effect felt outside of the local municipality and state and maintains that "an extensive correspondence was opened and carried on between the society and the executives of several of the states of the union, which tended to diffuse much information relative to its labors, and led to the adoption of reform in the penal laws in other parts of the continent.[43] It may have been as a direct result of this communication from Philadelphia that in his first message to the legislature Governor John Jay recommended the reform of the criminal code. Again, Thomas Eddy, one of the most energetic of the New York reform group, had been born in Philadelphia and had remained in intimate touch with the Society of Friends in that city. Professor Griscom was also a member of the Society of Friends. In 1794 Mr. Eddy and General Schuyler visited Philadelphia, were received by *The Philadelphia Society for Alleviating the Miseries of Public Prisons,* were told more of the reforms which had just been achieved in the criminal code and prison administration of Pennsylvania, and were shown what then seemed the highly successful new system in operation in the Walnut street jail. Study and further reflection convinced them that Pennsylvania had provided the desirable reform pattern for New York to emulate.[44] Aided by the legal sagacity of Spencer and the political support of Governor Jay, they introduced a bill into the New York Legislature designed to reduce the list of capital crimes to murder and treason, to substitute imprisonment for corporal punishment for non-capital crimes, and to provide for the erection of two state penitentiaries, one at Albany and one in New York City. This became law as the act of March 26, 1796.[45] Only one of the two prisons contemplated in the law was erected, the so-called Newgate Prison, which was built in Greenwich Village under the direction of a commission consisting of Matthew Clarkson, John Murray, Jr., John Watt, Thomas Eddy and Isaac Stoutenburgh, and was opened for the reception of inmates on November 28, 1797.

[43] *Notices,* p. 34.

[44] Cf. J. L. Sullivan, "Note on the Penitentiary System of New York State," in G. E. Baker's edition of *The Works of William H. Seward,* Vol. II, pp. 173-80. C. G. Haines, *Report on the Penitentiary System of the United States,* 1822.

[45] *Laws of the State of New York, from the First to the Twentieth Session of the Legislature,* Greenleaf edition, 1797, Vol. III, pp. 291-99.

There were, however, two fatal initial defects in this institution which led to its speedy abandonment. It was erected according to the unscientific congregate method of confinement, as practiced in the greater part of the Walnut street jail at Philadelphia, which made effective classification and discipline impossible. Moreover, it was so small that it very rapidly became overcrowded and the demoralizing practice arose of pardoning each year nearly as many convicts as were admitted, in order to keep the prison population down to a number which it was possible to house even under crowded conditions. According to statistics gathered by Senator Hopkins in 1824, 198 prisoners were received in 1813 and 134 were pardoned, and in 1814, 213 were received and 176 pardoned. Mr. Sullivan reports contemporary evidence as stating that between 1797 and 1822, 5,069 convicts were admitted and 2,819 pardoned.

The situation became so intolerable that on April 12, 1816, a law was passed authorizing the erection of a new state prison at Auburn in Cayuga County and a commission consisting of Elijah Miller, James Glover and John H. Beach was appointed to direct operations. They were authorized "to build a state prison similar to the one now in use in the City of New York with such variations as they think will best promote the interest of such institution."[46] The immediate control of building operations was handed over to William Brittin, a carpenter by trade and the first warden of the institution.[47] The evils of the congregate system of confinement do not appear to have been fully grasped in New York State as late as 1816, for the first wing of the new structure at Auburn, the south wing, was erected with both double cells and large rooms or apartments capable of receiving ten or more convicts in each. By 1819 the influence of the sentiment for solitary confinement had become dominant, and an act was passed on April 2nd of that year directing the inspectors to confine certain classes of prisoners in separate cells and to construct the north wing according to the principle of solitary confinement of each prisoner.[48] The outside cell construction, later followed in the Eastern Penitentiary of Pennsylvania, was not employed, but rather what came to be known as the Auburn or inside cell method of construction. After consultation with the Pennsylvania exponents of the system of solitary confinement, the New York reformers succeeded in securing the act of April 2, 1821, directing the prison inspectors to select a number of the "oldest and

[46] *Laws of the State of New York, Thirty-ninth to Forty-first Sessions,* Albany, 1818, pp. 79-80.
[47] Ibid., 45th to 47th Sessions, Albany, 1825, pp. 134-135.
[48] Ibid., 42nd to 44th Sessions, Albany, 1821, pp. 87-90.

most heinous offenders" and put them in solitary confinement, with the end in view of observing its disciplinary effects. A second class was to be put in separate cells for three days each week, while the younger offenders were to be allowed to work in the shops six days each week.[49] Eighty convicts were awarded as a Christmas present, in 1821, the privilege of furnishing the material for this experiment in prison discipline and administration. The method employed was not what became a few years later the developed Pennsylvania system of solitary confinement at hard labor in two large roomy cells and a small outside yard, but solitary confinement in a single small inside cell without any labor or other adequate provisions for physical exercise. The experiment continued during the year 1822 and 1823, and it is not surprising that it proved a hopeless failure and led to a marked prevalence of sickness and insanity on the part of the convicts in solitary confinement. It should be remembered, however, that this crude experiment throws no light upon the disciplinary and reformative potentialities of the perfected Pennsylvania system. The collapse of the experiment with solitary confinement at Auburn led to the complete abandonment of this type of discipline. In 1823 and 1824 Governor Yates pardoned most of those remaining in solitary confinement, and a majority of the legislative committee of investigation, appointed by the act of April 12, 1824, and consisting of Stephen Allen, Samuel M. Hopkins and George Tibbits, reported that nothing more could be hoped for from this type of procedure. The committee summarized their opinion as follows:

> A majority of the Board respectfully recommend to the Legislature the repeal of the laws for solitary confinement, in connection with the full adoption of an effectual government and discipline; and a majority of us would not recommend the same as a separate measure, nor in any case except in connection with such effective system of government and discipline.[50]

In the meantime the local prison authorities at Auburn had been working out a disciplinary and administrative scheme which was destined to become one of great historic significance—the Auburn system of congregate work by day and separation by night, with enforced silence at all times. Warden Brittin died in 1821 and his place was

[49]Ibid., pp. 215-18. *Sketch of the Principal Transactions*, p. 12; *Pennsylvania Journal of Prison Discipline and Philanthropy*, Vol. II, Number 2, 1846, p. 116.

[50]*Journal of the Assembly of the State of New York*, 48th Session, Albany, 1825, pp. 91-133. See especially pp. 121-126. For a statistical summary of the scandalous prevalence of pardoning in the Newgate Prison, see pages 126-7 of this report. This report is the best documentary source relative to the status of New York penology at the close of the first quarter of the last century.

taken by Captain Elam Lynds, who, with the aid of his deputy and architect, John Cray, and with the encouragement of Gershom Powers of the Board of Inspectors, worked out the new plan. The weight of evidence seems to warrant assigning the credit for originating and applying the new system of discipline to Mr. Cray.[51] The old system of congregate confinement having proved a failure and the alternative procedure of solitary confinement as applied at Auburn appearing likewise to promise nothing better, a compromise was reached between the two plans. The prisoners were allowed to work in groups in the prison shops and yards during the day, and were then locked singly in separate cells by night. Silence was enforced at all times, and the discipline was further extended by such devices as the lockstep, special regulations in the dining-hall, and the undeniable cruelty of Warden Lynds in his employment of whipping as a means of preserving order and securing obedience. Louis Dwight, the most powerful champion that the Auburn system ever had, describes in the following manner the operation of the new system. It is both an eloquent defense of this type of discipline and an excellent proof of the great alteration in disciplinary and administrative ideals held by prison reformers between 1826 and 1920:

> At Auburn we have a more beautiful example still of what may be done by proper discipline, in a prison well constructed. It is not possible to describe the pleasure which we feel in contemplating this noble institution, after wading through the fraud, and the material and moral filth of many prisons. We regard it as a model worthy of the worlds imitation. We do not mean that there is nothing in this institution which admits of improvement; for there have been a few cases of unjustifiable severity in punishments; but, upon the whole, the institution is immensely elevated above the old penitentiaries.
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> The whole establishment, from the gate to the sewer, is a specimen of neatness. The unremitted industry, the entire subordination and subdued feeling of the convicts, has probably no parallel among an equal number of criminals. In their solitary cells they spend the night, with no other book but the Bible, and at sun-rise they proceed, in military order, under the eye of the turnkeys, in solid columns, with the lock march, to their workshops; thence, in the same order, at the hour of breakfast, to the common hall, where they partake of their wholesome and frugal meal, in silence. Not even a whisper is heard; though the silence is such, that a whisper might be heard through the whole apartment. The convicts are seated, in single file, at narrow tables, with their backs towards the center, so that there can be no interchange of signs. If one has more food than he wants, he raises his left hand; and if another has less, he raises his right hand, and the waiter changes it. When they have done eating, at

[51] *Letter of Gershom Powers, Esq., in Answer to a Letter of the Hon. Edward Livingston in Relation to the Auburn State Prison,* Albany, 1829, pp. 5-11.

the ringing of a little bell, of the softest sound, they rise from the table, form the solid columns, and return, under the eye of the turnkeys, to the work-shops. From one end of the shops to the other, it is the testimony of many witnesses, that they have passed more than three hundred convicts, without seeing one leave his work, or turn his head to gaze at them. There is the most perfect attention to business from morning till night, interrupted only by the time necessary to dine, and never by the fact that the whole body of prisoners have done their tasks, and the time is now their own, and they can do as they please. At the close of the day, a little before sun-set, the work is all laid aside at once, and the convicts return, in military order, to the solitary cells; where they partake of the frugal meal, which they were permitted to take from the kitchen, where it was furnished for them as they returned from the shops. After supper, they can, if they choose, read Scripture undisturbed and then reflect in silence on the errors of their lives. They must not disturb their fellow prisoners, by even a whisper.[52]

About the time that the Auburn system was emerging into practice the legislature, by an Act of March 7, 1825, authorized the erection of another state prison near New York City to displace finally the Newgate Prison in Greenwich Village. The building commission was composed of Stephen Allen, George Tibbits and Samuel M. Hopkins,[53] who had recommended the erection of an additional prison in their famous report of 1825 on the state prison system in New York. This new state prison was built in the three years following under the direction of Captain Lynds, and in May, 1828, was ready for occupancy. Designated at first the Mount Pleasant Prison, it has come to be known in our day as the Sing Sing institution. From the beginning it operated according to the Auburn system.

IV. The Struggle Between the Auburn and Pennsylvania Systems

Though the series of advances in New York State penology which led to the completed Auburn system should be regarded as primarily an adaptation and imitation of the Pennsylvania reforms, and the Auburn system a variant of the Pennsylvania system, once the Auburn type of discipline had assumed an independent position a vigorous competition sprang up between the two systems and a bitter controversy was waged between the partisans of each. While the Penn-

[52]It was the emphasis on silence at Auburn which led to the frequent designation of the Auburn system as the "silent system." For the best analysis of the Auburn system at an early date, see Gershom Powers, *A Brief Account of the Construction, Management and Discipline of the New York State Prison at Auburn,* Auburn, 1826.

[53]*Laws of New York,* 1825, Chap XXV, pp. 16-17.

sylvania system was temporarily adopted by a number of Eastern states, it was speedily abandoned by all except New Jersey, which persisted in the experiment until 1858.[54] Owing to the economic advantages of the Auburn system, and, above all, to the tireless propaganda of Louis Dwight of the *Prison Discipline Society of Boston* in the interests of the Auburn system it triumphed almost completely over its rival in this country. On the other hand, most of the official European investigators of the two systems of prison discipline reported to their respective governments in favor of the Pennsylvania system of solitary confinement and the Pennsylvania system was much more widely adopted in Europe from 1830 to 1860 than the Auburn.

An adequate account of the bitter controversy that was waged from 1825 to 1860 between the exponents of the rival Pennsylvania and Auburn systems would occupy a large volume in itself and it can only be briefly touched upon in this place. The struggle began before either system was thoroughly established. As early as 1826-7 the commissioners who were appointed to devise the system of administration for the new state penitentiaries in Pennsylvania were approached by advocates of the Auburn system and were converted to an advocacy of its adoption. The main conflict was waged between the *Prison Discipline Society of Boston,* for the Auburn system, and the *Philadelphia Society for Alleviating the Miseries of Public Prisons,* for the Pennsylvania system. After its organization in 1845, the *Prison Society of New York* supported the Boston society in urging the adoption of the Auburn system. The *Prison Discipline Society of Boston* was organized by Louis Dwight (1793-1854). Dwight had originally prepared for the ministry, but was prevented from preaching by an injury to his lungs in an accident in a chemical laboratory. In 1824 he rode on horseback throughout the eastern part of the country distributing Bibles to prisoners. He was horrified by the appalling abuses in the contemporary prison systems and he determined to devote his life to an improvement of their condition. He organized and directed the *Prison Discipline Society of Boston* from 1825 to his death in

[54]The following data indicates the degree and period of adoption and abandonment of the Pennsylvania system in the United States. Maryland introduced solitary confinement in 1809 and abolished it in 1838. Massachusetts authorized solitary confinement in 1811 and did away with it in 1829. Maine experimented with solitary confinement from 1824 to 1827. New Jersey introduced solitary confinement in 1820, abolished it in 1828, reintroduced it in 1833 and finally abolished it in 1858. Virginia introduced solitary confinement in 1824 and practically abolished it in 1833. Rhode Island introduced solitary confinement in 1838 and abolished it in 1844. Except for these instances the Auburn system prevailed in the early state prisons of this country.

1854. As secretary of the society he wrote its reports, which are much the best single source for the study of American penology during this period, though they are disfigured by a violent opposition to the Pennsylvania system. He was repeatedly accused of unfairness and dishonesty by members of the *Philadelphia Society for Alleviating the Miseries of Public Prisons,* but a careful examination of the polemic pamphlets of both parties to the conflict cannot fail to impress an impartial reader with the fact that neither was qualified to "cast the first stone." Both were fiercely partisan and both were disgracefully unscrupulous in their use of statistics designed to support their cause or damage that of their opponents. The only gratifying feature of the controversy was that both systems were so greatly superior to the unspeakable congregate system which they displaced that their competition inevitably worked for the betterment of penal conditions. That Dwight and the Auburn system triumphed was not as much due to superior ability on his part as to the undoubted advantages in his position. The Pennsylvania system had been unfairly discredited by the failure of its imperfect application before 1829, and the Auburn system was free from this initial handicap. Further, the Auburn type of administration required less expenditure for introduction and the economic arguments in its favor were, at least superficially, much more attractive than for the Pennsylvania system. Added to these advantages was the superior and more wide-spread organization of the Boston Society throughout the country.[55]

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[55]The controversy conducted in the reports and publications of these societies can be followed further in the controversial pamphlets which were issued by the exponents of the two systems during this period. The following are among the most important:

The Pennsylvania system is upheld and defended in the following articles and pamphlets—

Roberts Vaux, *Letters on the Penitentiary System of Pennsylvania, Addressed to William Roscoe, Esquire,* Philadelphia, 1827; George W. Smith, *A Defense of the Pennsylvania System of the Solitary Confinement of Prisoners,* 1829, 1833; Edward Livingston, *Introductory Report to the Code of Prison Discipline,* Philadelphia, 1827; and by the same writer, *Letters on the Pennsylvania System to Roberts Vaux,* 1828; Francis Lieber, *The Penitentiary System of Pennsylvania,* in the appendix to his translation of Beaumont and De Tocqueville; and by the same author, *A Popular Essay on the Subjects of Penal Law and on Uninterrupted Solitary Confinement at Labor,* Philadelphia, 1838; John Sibley, *A Letter on the Superior Advantages of Solitary Confinement,* London, 1838; L. M. Moreau-Christophe, *Emprisonnement Individuel,* Paris, 1842; W. H. Suringar, *Considerations sur la réclusion individuelle, Paris,* 1843; *Report of a Minority of the Special Committee of the Boston Prison Discipline Society,* Boston, 1846; F. A. Packard, *A Vindication of the Separate System of Prison Discipline,* Philadelphia, 1839; *An Inquiry into the Alleged Tendency of the Separation of Convicts One from the Other to Produce Death and Derangement,* Philadelphia, 1849; W. P. Foulke, *Remarks on Cellular Separation,* Philadelphia, 1860; *The Pennsylvania System of Separate Confinement*

In addition to the conflict between these prison reform societies, most of the leaders in the improvement of criminal jurisprudence and penal administration in this country took a decided stand on one side or the other of the controversy. The Pennsylvania system was defended by Roberts Vaux, Edward Livingston, Francis Lieber, Dorothea Lynde Dix, William Parker Foulke and Richard Vaux. The Auburn plan of administration was warmly favored by DeWitt Clinton, Gershom Powers, Amos Pillsbury, William H. Seward, E. C. Wines, Theodore W. Dwight, Frank Sanborn and Gideon Haynes. The controversy gradually died out after 1860. With an introduction of a knowledge of the Irish system into the United States, through the efforts of Frank Sanborn and others, about 1865, and its later development into the Elmira Reformatory system by 1875, the advocates of both older types of administration soon came to see that they had been supporting a hopelessly crude and elementary penal system and few possessed the audacity or stupidity to prolong the dispute.

V. Leading Phases of New York Penology Since 1830

As this paper deals only with the historical background of the beginning of prison reform in New York State, it will be necessary to refrain from describing the interesting and important progress made subsequent to the establishment of the Auburn system. Here would fall the development of the principle of differentiation in the treatment of the criminal population through the provision of institutions for delinquent children, reformatories for young first offenders, hospitals for the criminal insane and custodials for the feeble-minded and idiotic, all of which classes were incarcerated in jails and prisons in 1825 when guilty of criminal acts.[56] This limitation must of necessity be irritating to a loyal New Yorker, for it excludes notable advances in

Explained and Defended, Philadelphia, 1867; and the many and diverse writings of Richard Vaux from 1850 to 1875.

The Pennsylvania system is condemned in the writings given below:

William Roscoe, *A Brief Statement of the Causes which Had Led to the Abandonment of the Celebrated System of Penitentiary Discipline in Some of the United States of America,* London, 1826; *The North American Review,* July, 1839, pp. 1-43; Ibid, January, 1848; Sir Peter Laurie, *A Letter on the Disadvantages and Extravagance of the Separate System of Prison Discipline,* London, 1848; and by the same author, *"Killing No Murder," or the Effects of Solitary Confinement on Prisoners;* London, 1846; George Combe, *Notes on the United States of North America,* 1838-40, (1841) especially, pp. 220-224; F. C. Gray, *Prison Discipline in America,* 1847; and *The Christian Examiner,* March, 1848.

[56]On this diversification of institutions see Philip Klein, *Prison Methods on New York State,* Chap. II.

penology in which New York took the lead instead of following in the wake of another adjoining commonwealth, as in the case of the establishment of the state prison system. The first institution for juvenile delinquents in this country was opened at Madison Square on January 25, 1825, due to the efforts of local philanthropists, such as Thomas Eddy, Charles G. Haines, and Cadwallder D. Colden. They were led by Professor John Griscom, a member of the Society of Friends, who had just returned from a visit to Europe, during which he had noted the progress being made towards the provision of child-caring institutions in England and Continental Europe.[57] Even more significant was the birth of the modern reformatory with the opening of the Elmira Reformatory in 1877. This institution, the product of the energy and synthetic genius of E. C. Wines, Theodore Dwight, Frank Sanborn, Gideon Hubbell and Z. R. Brockway, embodied in its disciplinary and administrative procedure nearly all of the progressive phases of nineteenth century penology, including Sir Charles Lucas' emphasis on reformation, Maconochie's practice of commutation of sentence for good behavior, the grading and classifying system of Sir Walter Crofton and his Irish system, the indeterminate sentence of Whatley, Combe and the brothers Hill, Marsangy's parole system and the emphasis on productive labor by Montesinos and Obermaier.[58] Nor should one forget Mr. Thomas Mott Osborne's *Mutual Welfare League,* recently originated in Auburn and tried out more thoroughly in Sing Sing, and which, in spite of being based on too enthusiastic an optimism as to the innate goodness of the average convict and marred by the lack of sufficient discrimination between different types of convicts, bids fair to be recognized as one of the epoch-making steps in the history of penology and reformation.[59] Finally, one must note the extremely significant step recently taken in the establishment of a psychological clinic at Sing Sing under the direction of Dr. Bernard Glueck.[60]

VI—Summary

We have here attempted to show the late origin of prisons and the persistence until recent times of atrociously severe criminal codes

[57]B. J. Lossing, *History of New York City,* pp. 348ff, 398.

[58]Wines, *Punishment and Reformation,* Chaps. IX-X.

[59]Osborne, T. M., *Society and Its Prisons.*

[60]*Mental Hygiene,* January, April and October, 1918.

For a comprehensive survey of the progress in criminology which has accompanied these advances in penology see B. De Quiros, *Modern Theories of* Crime.

and of the barbarous methods of corporal punishment which accompanied them. There was a general European movement towards the moderation of criminal codes and towards the adoption of imprisonment as the typical method of imprisonment during the later eighteenth and early nineteenth centuries. Among the European leaders in the reforms were Beccaria, Romilly, Howard and Elizabeth Fry. The initiative in America was taken by the Philadelphia reformers under the leadership of the Society of Friends. The program was based in part upon an imitation of the colonial precepts and practices of William Penn and in part upon an imitation of the European movements. They succeeded in introducing into America in a permanent fashion humane criminal jurisprudence and the modern prison system. The New York reformers found in the Pennsylvania precedent the model for imitation. After a faulty trial of the Pennsylvania plan the New York authorities devised a disciplinary variation which soon assumed the proportions of an independent competing system and ultimately displaced its contender as the typical prison system of this country. Though the Auburn system has long since become antiquated, New York has maintained a leading place in progressive penology in this country through the priority which she can claim in the introduction of the first institution for juvenile delinquents, the first perfected reformatory, the first notable experiment with prison democracy and the first thorough application of medical psychology to a study of the causes and treatment of crime.