

1916

Prison Reform

Joseph P. Byers

Follow this and additional works at: <https://scholarlycommons.law.northwestern.edu/jclc>

 Part of the [Criminal Law Commons](#), [Criminology Commons](#), and the [Criminology and Criminal Justice Commons](#)

Recommended Citation

Joseph P. Byers, Prison Reform, 6 J. Am. Inst. Crim. L. & Criminology 872 (May 1915 to March 1916)

This Article is brought to you for free and open access by Northwestern University School of Law Scholarly Commons. It has been accepted for inclusion in Journal of Criminal Law and Criminology by an authorized editor of Northwestern University School of Law Scholarly Commons.

PRISON REFORM.¹

ADDRESS OF THE PRESIDENT OF THE AMERICAN PRISON ASSOCIATION.

JOSEPH P. BYERS.²

Prison Reform, to most of us, is something that concerns the improvement of our penal and correctional institutions. It is this, to be sure, but it is much more. It embraces the criminal, who he is, what he is, why he is. It covers the questions of our laws and their enforcement, and penalties and their adjustment to the offender. It goes even further than this; for the final object of Prison Reform is to prevent crime, stop the production of criminals, and abolish prisons.

With this conception of Prison Reform we see that, in a broad sense, it begins before we reach the prisons and the need for the infliction of penalties for law violation. That the American Prison Association recognizes the truth of this is evidenced by the fact that, year after year at its annual meetings, the subject of crime prevention has been discussed no less than questions of prison administration and criminal law. The Association has not neglected the consideration of those influences and agencies in our social life, whether environment or hereditary or what not, that contribute to discourage or prevent criminal conduct.

But we are only beginning to understand the necessity of attacking the causes of crime. These lie outside our penal and correctional institutions. Just as boils on the body are indications of disorder in the blood, so are these institutions evidence, symptoms, indications of disease in the body politic. Our prisons and reformatories are, if you please, hospitals for the care and treatment of those who through criminal conduct have shown symptoms of criminal character.

We may be proud and not without justification, because many of those afflicted have been restored by the course of treatment they

¹Read before the annual congress of the American Prison Associations at Oakland, Cal., October 9, 1915.

²Executive Secretary of the Committee on Provision for the Feeble-Minded, Philadelphia.

have received in these institutions, and that they are, in this sense, truly hospitals. But these people are largely the result of social conditions—poor homes, vicious surroundings, bad heredity, immoral influences or defective schooling—and in so far as we restrict our efforts to their care we confine ourselves very largely to the treatment of symptoms.

Symptoms are good only for diagnosis. If we stop here we shall never effect a cure. Crime will never be cured nor law breaking controlled by all the prisons and reformatories we can build. We shall have to go on increasing the number and variety of these institutions—we shall have to go on passing new laws and devising new penalties—as long as we shut our eyes to the causes that make laws and penalties and institutions necessary. We must not entertain the notion that these walled establishments are a sort of prophylactic with prevention its chief virtue. This is not true. It would not be true even though they realized in their organization and management the fondest hopes of the most zealous advocates of the so-called “honor” and “self-government” systems, together with the highest development of the prison schools, industrial training and religious influences.

No; the causes of crime exist, for the most part, outside these institutions and it is on the outside that we must apply the real remedies.

The value of a machine is judged by its product. Defective product indicates either defects in the machine or in material. Study of the product reveals which is at fault. It is often quite as much worth while to examine the perfect product in order to learn why it did not go wrong in passing through the machine as to examine the defective product to learn why it did go wrong. So it is with the social machine. Some of its product seems to be good. Some of it is unquestionably bad. Why is it? What qualities do the good possess that enable them to come through the machine apparently sound and whole, while others come through mutilated and deformed? Does the machine occasionally “slip a cog” or is the poor product due to inherent defects in the material? It is important for us to know. A study of all the product will tell us. But we will probably learn most and quickest from studying the defective output, assuming now that some of it is quite satisfactory. It is here that our prisons and reformatories can be of greatest service. This is their part of the work. They must not cease to be institutions of healing, hospitals in every sense of the word; but this need not interfere with a larger purpose. Indeed, it is because they are hospitals that they must also become laboratories—human laboratories—where not only each

prisoner shall be studied and a course of treatment outlined for him that shall check his tendencies for wrongdoing and encourage and strengthen him in rightdoing to the end that good character be established in him, but laboratories where the nature, source and development of anti-social acts and those who commit them shall be studied and out of which shall come remedial and immunizing agencies for the cure and prevention of crime.

There is already under way a movement in this direction. In some of our institutions and in connection with the work of some of our courts, specialists, psychologists, psychiatrists, physicians and others are at work. They are already telling us that a considerable percentage of persons arrested for crime and delinquency are so feeble in mind as to lack the power to resist those influences or tendencies that culminate in criminal acts. They are not agreed as to what the percentage is, though many of them do not hesitate to place it so high as to leave little hope even for those of us who up to now have successfully escaped their examination. But that the number of this class is sufficiently large to demand and repay special consideration the work of these scientists and the experience of prison officials alike confirm. While not agreed on the quantity they are agreed on the fact.

We know, therefore, that the crime question is complicated by the element of feeble-mindedness. These various authorities tell us that it constitutes from fifteen to seventy per cent. of the criminal and delinquent class. Goddard places it between twenty-five and fifty per cent. Until they can tell us more accurately and therefore more convincingly we should exercise considerable conservatism both in thought and statement regarding the matter. In accepting *the fact* we must not seem to adopt the *theory* that *all* criminal acts are due to mental defect. The garment of immunity with which we cover the feeble-minded must have no surplusage under which any *responsible* criminal can hide. But I will certainly not be accused of over-statement when I take twelve per cent. as representing the number of really feeble-minded folk in our criminal and delinquent population.

Is this number large enough and important enough to affect the whole crime problem? Can we solve this twelve per cent. and in so doing simplify the solution of the whole? If we are unable to take the whole citadel of crime at once isn't there a place where we can make a breach in the walls as a preliminary to its final capture? And is not the weakest spot, the one easiest to demolish, that portion of the works defended by the feeble-minded? How strong is the citadel? How many defenders has it where the breach is to be made?

Well, the stronghold of crime in the United States is defended by a standing army of not less than 400,000. The latest returns concerning this army are from the United State Census of 1910, but we can rest assured that in the intervening five years it has not suffered any material loss. On the first day of Janaury of that year there were 136,000 persons in custody in prisons, reformatories, jails and workhouses. During that year there were 493,000 commitments to the same institutions, but included in these were an unknown number of recommitments of the same person. If we allow a little more than one-third of the total number for possible recommitments (and this is a liberal allowance) and add the remaining 314,000 to the number in the institutions on the first day of the year we shall have 450,000 individuals confined in these institutions during the year. But I want to be still more conservative and from these I deduct the odd fifty thousand. Moreover I shall not consider the large number of criminals at large and not on record during the year.

I have thus reduced to its lowest terms this standing criminal army and it numbers 400,000. This army is kept recruited up to the mark. It is twelve per cent. feeble-minded—that means 48,000 defenders of that portion of the defenses where we can most surely and quickly and successfully launch an attack. Is it not worth while to deplete the enemy's resources by one-twelfth? Especially if these can be captured and placed in concentration camps with out any effort on our part except that required to prepare the camps and lead the captives into them? Is it not easier and cheaper to do this than to pay the heavy toll they exact from our present method of treating them?

These people are so feeble-minded that they are unable to resist or escape from the doing of those things we call unlawful. The best means we have yet devised for protection against their acts, their misdeeds due to their inherent inability to measure up to the standard we have set both for them and ourselves, is to sentence them to live behind walls and bars for a season. Then we turn them loose again. And then they relapse. And then we wonder what is wrong with our institutions and our courts, our probation and parole work!

Several things are wrong. First of all the truly feeble-minded person should not be sentenced to imprisonment. He should be committed to permanent custody: not in a prison but in a place where he will have opportunity to live, to the highest degree possible, a life of usefulness and happiness adjusted to the level of his natural ability. Our laws must be made to provide for the legal and permanent guardianship by the State of any and all persons whose mental equip-

ment is so defective as to make them a menace to themselves or others. That guardianship should be exercised either in or out of institutions.

There is also something to be said on this score from another standpoint. The presence of these irresponsibles in our prisons and reformatories does them and us not only no good, but actual harm. As a class, the higher types of which are so often unrecognized, they are pliant and easy tools for vicious and unscrupulous prisoners. To subject these irresponsibles to the at best rigorous life of imprisonment is unjust to them and unworthy of an enlightened people. To submit them to the test of "Honor System" or to apply to them the principle of "Self-Government" tends inevitably to discredit the one and make the other ridiculous. When we have eliminated the feeble-minded from our prisons and have segregated also that other group made up of the habitually immoral and chronic offenders, we may well apply to the remainder all of the features of the Honor and Self-Government systems to which they are capable of responding.

But there is still another point not to be lost sight of and that is as to the amount of crime these feeble-minded criminals and delinquents commit. We can reach some approximation of this from the records of the State of Massachusetts. In 1914, 23,303 individuals were under sentence in that State for crime. More than half of these, 13,437, (57.6 per cent.) were repeaters, *recidivists*, with an average number of convictions to their credit of seven and a half. Out of a total number of recorded sentences of 110,816 these repeaters had received 100,950. In other words *57.6 per cent. of the convicted criminals were guilty of 91 per cent. of the crime.*

Now if we had the wisdom to discern at an early period in their careers just who were doomed to join the recidivist class we could diminish crime on the basis of the Massachusetts figures nine-tenths by permanently segregating them before they repeated their first offense. But, unfortunately, we have not yet reached the point where we are willing to sentence people on the basis of *known criminal character*. We wait until the offense is committed and then undertake to prove the act when we might easily in many cases have prevented the act by proving character. Incidentally the sequestration of *known* criminals and those who combine criminal tendencies with weakened intellects, would make safer the lives of citizens of high place and power whose services the country can ill afford to lose. Criminal conduct from criminal character is a safe prediction.

The police and detective forces of every city in the country could today, if directed to do so, gather in many people of known criminal character. They ought to do it. These people should be given full

opportunity to show legitimate source of livelihood. No honest man would have any difficulty in doing so. If, failing in this, they should be committed to workhouses and there kept long enough to give them the habit of good wholesome work, there would be, beyond any question, a very marked reduction in crime.

There is, however, a certain proportion of the recidivists that we might easily isolate and place in the permanent custody of the State not on the score of criminal character but because they are feeble-minded. In the light of investigations already made there seems no question but that a large per cent. of these chronic offenders are true defective-delinquents. I think I shall still be admittedly conservative if I put this per cent. at twenty. In Massachusetts we find the recidivists furnishing 57.6 per cent. of sentenced prisoners and 91 per cent. of all sentences for crime. On the basis of one-fifth (20 per cent.) of this class being feeble-minded we find that this one-fifth (2,687) constitutes 11.5 per cent. of the whole number of sentenced prisoners and that this comparatively small number is responsible for 18.2 per cent. of detected and punished crime. The Massachusetts percentages cut in half, for the sake of conservatism, and applied to the whole country on the basis of 400,000 criminals, indicates over 115,000 recidivists and among the latter more than 23,000 feeble-minded offenders.

Science is telling us how to detect and experience is teaching us how to care for the feeble-minded. Shall we who have some share of responsibility for guiding the public mind aright on these matters fail to emphasize the intimate relationship between crime and mental deficiency and the opportunity, yes, the duty, and the necessity of providing permanently for these misguided and stumbling weaklings? The cost will be infinitely less than the price we will pay for our neglect.

When we have done this we can with better spirit and larger hope of success tackle some of the other intimate prison problems. To some of these the public mind is being diverted with dangerous enthusiasm. In many quarters it is being led to believe that a new theory or system of penology has been discovered; that among prisoners for crime there is a high sense of honor and an ability for righteous self-government that have not heretofore been recognized; that the solution of the crime question is largely a matter of catering to the self-interest of prisoners through what is called the "Honor System" or the "Self-Government System."

Let us have the honor system by all means. I believe in it. It has stood the test, inside as well as outside penal institutions. Contrary

to the belief of some, men inside prisons were stimulated to honorable conduct before the comparatively recent advertisement of it as "a system." We need to encourage the system on both sides of the prison walls. If it is good for prisoners it is good for the rest of us who "but for the grace of God" might be prisoners.

Trusting a man does not make him honorable. Believing in him does not make him honorable. But if he trusts you, believes in *you*, he will probably be loyal to you and what he conceives to be *your* interest, especially if it runs parallel with his own. So far his loyalty seems to be closely akin to honor. But if outside the circle of your influence and your interests he elects to cheat or steal or is given to uncleanness or lawlessness, would you call him honorable? If so, I have misconceived the meaning of the word.

Honor, in its true sense, is something that dominates the whole man. It causes him to sacrifice self-interest, comfort, pleasure, happiness. For *honor* men die.

Let us realize now that with the great majority of prisoners, possibly with the great majority of all of us, honor has a meaning synonymous with "self-interest." Self-interest plus a modicum of honor may make it possible to safely employ prisoners in the open, on roads, in camps, on farms. If honor can be stimulated through self-interest let us utilize the one to build up the other. If one or both in combination make men safe outside prison walls, then let us send them and keep them outside, as long as we can give them men's work to do. But let us not forget that these two influences, self-interest and honor, singly or together, are not strong enough to keep *all* prisoners safe from falling before the larger opportunities and temptations of the outside world. The honor system is good. It has come to stay. But it can be *overdone* to its own hurt by overzealous advocates, of whom there are many *outside* the prisons. The development of the system should be left to experienced prison officials. And these officials should not permit themselves to be stampeded by a public clamor engineered by a comparatively few enthusiastic theorists.

Self-government by all means. We are a self-governing people. If the average citizen was not self-governing we would not have a republic. Governments, like people, progress or retrograde; they do not stand still. Excellence of a government is determined by the average worth of its citizens. Water does not rise higher than its source unless it is forced by some power outside itself.

The average worth of a law violator is less than that of a law-abiding citizen. I use the word worth in its sense of "mental and moral excellence." Therefore, any form of self-government that they, the

prisoners, may organize is on a lower plane than one dominated by those who are law-abiding.

The population of our prisons is made up of law violators.

Therefore, any desirable form of government in a prison must be organized, directed, supervised and controlled by a superior, not an inferior, power, a power exterior to the prisoner body. It must be the force applied from below that causes the water to ascend above its natural level—and it must be a regulated and continuous force, else there will be great instability. This force in prison government must be, ought to be, by law is, the warden and his legally chosen assistants.

So I contend that in this sense the prison can not become a republic. It must be a monarchy; it ought to be a benevolent one. If its inmates were capable of decent and lawful self-government they would not be there. Of course they must be taught self-control and all the other virtues. But this teaching must be an actual force, constantly applied by those who have the right, the wisdom, the power and the duty to apply it. This force does not reside in the prisoner body.

The conviction that one is perfectly capable of governing ones self, tends to make one intolerant of attempted control or direction by others. This is true also of governments and of prisoners.

Government of the prison, by the prisoners, for the prisoners, will not teach lawless men respect for lawfully constituted authority. It does encourage in them a spirit of contempt for prison officers who represent law and order. These officers are your representatives and mine. If they, or any of them, are unfit, we ought to replace them. But as long as law has in these officers its legal and proper representatives, we, who have our share of responsibility for the making of the laws, should see to it that the thing they represent shall not be brought into contempt.

There is an almost general unrest in our penal and reformatory institutions, due largely to innovations in their management introduced by prison officials, sometimes on their own initiative, more often at the urging of those without practical experience but imbued with the zeal of the reformer. That the public mind is being disturbed on the subject of Prison Reform is in itself a wholesome indication. But the public is not reminded, as it ought to be, of those men and women who inside and outside of our prisons and reformatories during the past fifty and more years planned and labored and sacrificed for the advancement of prison science. The list is a long one. On it are the names of E. C. Wines, Gardiner Tufts, F. B. Sanborn, Z. R. Brockway,

Amos Pilsbury, F. H. Wines, Rutherford B. Hayes, R. Brinkerhoff, Albert G. Byers, E. S. Wright, J. L. Milligan, Ellen C. Johnson, Samuel J. Barrows, Chas. R. Henderson, S. F. Smith and many others still in the work. These men and women brought to their work rare ability and ripe experience both as administrators and as students of men. They devoted their lives to the development of better conditions in the prisons and a kindlier attitude toward ex-prisoners on the part of the public. They never abandoned their high ideals nor lost their sweet optimism. Can it be that they missed the true essence of Prison Reform? I cannot believe it. If the prison of today is better than the prison of yesterday, if the prisoner of today has better treatment than the prisoner of yesterday, if today he is the object of more intelligent public interest and solicitude than formerly, it is because these men and women and their confreres lived and labored and sacrificed. We should have a care lest in the remodeling of their work—and to deny the need of remodeling is to deny human progress—we do not pull the whole thing down about our ears.

Forty-five years ago almost to a day the first Prison Reform Congress held in the United States convened in the city of Cincinnati. That Congress, in a so-called Declaration of Principles, laid the foundation for prison reform not only in this, but in all civilized countries of the world. Those principles, viewed in the light of the achievements and mistakes of the past forty-five years, are as sound today as they were in 1870. They have been the basis for all the progress we have made and they still furnish our program for the future.

It is worth while, particularly at this time when social reforms of every character are being urged by more or less responsible individuals and societies all over the land, for us to examine these foundations and the superstructure that has been erected upon them.

The Declaration begins by stating that "The supreme aim of Prison Discipline is the reformation of prisoners." Note the conjunction of the words "discipline" and "reformation." The word discipline is used, not in a punitive sense, but in its broadest interpretation, and this means discipline of body, of mind, and of will. This discipline must be exercised in a way and under conditions that will induce reformation. Reformation means to make better. What does the prisoner need to make him better? Just what you and I need. To begin with, he needs the wholesome discipline of work, hard work, or at least the sort of work at which he can work hard *every day*. He needs fresh air, light, wholesome food. He needs the influence of example of men whose ideals are higher than his own.

He needs to learn that the way of the transgressor is hard. He needs to learn the wisdom of self-control; to recognize that for the violation of law there is a certain undesirable consequence which we call penalty. Penalty is punishment, and because of this we cannot disassociate the idea of punishment from any institution or condition in which one remains or is made to conform against one's will. Therefore it is the *will* that must be reformed until it shall reach the point where one wills to do what is right. To this end all that I have mentioned as to the needs of the prisoner must be made to contribute. We need to emphasize this at a time when the public mind is being disturbed by political demagogues and amateur reformers, the one foisting upon the prisons inexperienced and untrained officials, the other impractical ideas.

The Declaration then proceeds to lay down the principles by which the reformation of prisoners is to be attained. These include:

The progressive classification of prisoners based on character.

Rewards, more than punishment, as essential to every good prison system.

Indeterminate sentences, to be limited only by satisfactory proof of reformation.

Education as a vital force in reformation, and hence the need of the prison school.

Labor as the basis of all reformatory discipline.

The abolition of contract labor as prejudicial to discipline, finance and reformation.

Graded prisons, to include separate provision for the incorrigible, the untried, younger criminals, and for women.

The uselessness of repeated short sentences for minor criminals.

Preventive institutions for juvenile delinquents, including truant homes and industrial schools.

More systematic and comprehensive methods for the saving of discharged prisoners.

Indemnification for wrongful imprisonment.

The duty of society to improve conditions that beget and foster crime.

The requirements from parents of full or partial support of their delinquent children in reformatory institutions.

The construction and management of *all* prisons by the State as essential to a complete system of reformatory establishments with some central authority "to guide, control, unify, and vitalize the whole."

Religion, of all reformatory agencies, as first in importance.

On the foundation of these principles that I have thus hurriedly reviewed, what have we really builded in the intervening forty-five years?

We have established in practically all of the States special institutions for juvenile delinquents; in one-third of them reformatories for young men; and *in five* separate prisons or reformatories for women.

We have pretty generally recognized, and in most of the Northern States adopted indeterminate sentence and parole laws. These laws operate to protect and save discharged prisoners. They also necessitate the adoption of grading systems that stimulate to good conduct through the bestowal of privileges and rewards. But no system can offer rewards for good conduct without withholding them for bad conduct. This in itself means discipline and punishment.

We are still experimenting with prison labor with some fair hope that in the State Use Plan we have found a rational substitute for that half-brother of the Lease System, Contract Labor. The utilization of the labor of prisoners for the production of goods to be consumed by the State, and in road building, farming, forestry and other conservation work, has passed the experimental stage. We have proven beyond any question that prisoners must be safely and profitably employed outside the prison walls; but this is not true of *all* prisoners and we must have a care test, in the application of this new idea, we grow over-sanguine. A prisoner who has not begun to feel "the restraining influences of liberty" is not fit to leave the prison either for the open work of the road, farm and forest, or upon parole. But if, as seems likely, from forty to sixty per cent. of the inmates of our state prisons and reformatories can, at some stage in their imprisonment, be worked outside these institutions, then the problem of the employment of the remainder within the walls becomes comparatively easy of solution. This system of employment is bringing about a recognition of the right of the prisoner to have some share in the product of his labor, especially when he has wife, children, or parents dependent upon him for support. This right, or, if it is not a right, then this privilege has already been recognized by legislation or practice in a number of States. Possibly we may eventually go one step further and require him, from his earnings, to make restitution either to the State or individuals for the wrong committed by him.

We have not yet recognized the principle of indemnification by the State for wrongful imprisonment.

Our prison school systems, with a few notable exceptions, are systems largely in name only.

We have gone all too slow in requiring parents to pay for the whole or partial support of their delinquent children.

We are still guilty of the folly of punishing chronic misdemeanants by repeated short sentences.

It is needless for me to dwell upon the efforts now being made by society to improve "conditions that beget and foster crime." Numberless influences are at work. Among these are recreation centers, public playgrounds, better home conditions, special and vocational schools, laws regulating or prohibiting the sale of drugs and liquors, and a growing sense of civic responsibility.

How far have we gone in organizing a real prison system? Not far! Our prisons and reformatories and jails and workhouses are administered as separate and independent units, with a consequent utter lack of system. All of these institutions should be placed under the supervision and direction of the State, to the end that out of the present chaotic condition a real and efficient state penal and correctional system may be established. An initial step will be the abolition of our present county jail system and the substitution therefor of houses of detention in each county for all persons held for trial or detained as witnesses; with a system of county or district workhouses to which all persons sentenced to imprisonment for minor crimes and misdemeanors shall be committed. With these we must have laws that shall, *first*, make compulsory the absolute separation, each from the other, of all persons during the time they are held in such houses of detention; *second*, that shall provide for indefinite sentences to such workhouses, with provisions for parole, for all persons convicted and sentenced for misdemeanors or minor crimes, and *third*, that shall provide for the setting aside of a reasonable portion of the earnings of the prisoner for the use of his or her dependent family, or as an aid to rehabilitation at the time of parole, or for restitution to those who suffered by his criminal conduct. The State, as the lawmaking power, must itself assume the custody and direct the treatment of those who are charged with the violation of its laws. Therefore, in the construction and management of such houses of detention and workhouses, as well as of county jails, the State should have a controlling voice.

Our county jails have been indicted, tried, and found guilty as unsanitary, immoral, medieval, crime breeders. The English language has been exhausted in describing their pernicious and vicious influence, and the truth of all that has been said we are forced to admit. They

are pouring the virus of crime, of immorality and disease into our social system. We can abolish these institutions by the establishment of workhouses for convicted misdemeanants and of houses of detention for the untried.

The control of crime leads toward the final abolition of all prisons; failure to control leads toward the abolition of law. There are but the two roads. We have chosen the first. This may seem ideal? It is. And the realization of this ideal very, very remote? It is. But ideals are necessary antecedents to progress and the higher the ideal the higher we climb. If we fall short of perfection let it not be because we failed to aim at it.

We have tried, are still trying, to eliminate crime by legislative enactment; but laws, human laws, do not in themselves make men moral. That is something that works from within; the process, however, is greatly encouraged and expedited by external influences and many of these are at work. But we have been spending our efforts very largely to improve the physical and mental. Let us hope that we shall finally reach up and into the moral and spiritual, which is the final step in all our work, to *re-create* in man not only the image but the attributes of his Maker.