

Winter 1930

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### Recommended Citation

E. Stagg Whitin, Analysis of the Prison Problem, An, 20 Am. Inst. Crim. L. & Criminology 519 (1929-1930)

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# AN ANALYSIS OF THE PRISON PROBLEM<sup>1</sup>

E. STAGG WHITIN<sup>2</sup>

## *The Prison Problem*

"Its dealings with the criminal mark, one may say, the zero point in the scale of treatment which society conceives to be the due of its various members. If we raise this point we raise the standard all along the scale. The pauper may justly expect something better than the criminal, the self-supporting poor man or woman than the pauper. Thus if it is the aim of good civilization to raise the general standard of life, this is a tendency which a savage criminal law will hinder and a humane one assist."

*"Morals in Evolution,"* L. T. HOBHOUSE.

"Three methods of dealing with the criminal have developed during the progress of civilization; death, banishment or deportation and enslavement either by peonage or in a community set aside and known as a prison.

"Retribution has centered on the individual while his family and social group bear an indirect portion of the suffering.

"The present thought is that the penalty for crime should not be paid to the state at the expense of the family and the social groups. In place of this, the individual should be forced to a life and labor which will at least help to maintain his dependents, if possible pay for the social destruction which he has entailed and change him so that he is no longer a destructive element but will continue upon release as a valuable member of the community.

"The idea of vengeance and retribution with its destruction which has dominated states in their attempt to discipline each other is passing. The idea of vengeance and retribution with the destruction of the individual in the attempt to discipline him is also passing. As the machinery of governmental control over conflicts between states tends to readjust the causes, industrial, mental and moral which have led to the difficulty, the new penology tends to correct the individual through study from the physical, industrial, mental and moral standpoints and

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<sup>1</sup>Prepared at the request of members of the Secretariat of the League of Nations.

<sup>2</sup>Executive Director, National Committee on Prisons and Prison Labor, 4 West 57th Street, New York City.

the application of methods which are improved by all that science can bring to bear.

"A state is made up of individuals and its mind and morals are the sum of the minds and morals of these individuals. It is fallacious to expect the individual members of a state to support that state in its dealings with another state on an intellectual and moral basis which finds no reflection in the state's own dealings with individuals. Human nature is always changing, but in its daily relations of man to man, it creates a permanent custom and a method of thinking which is the only safeguard in democracies against the reversion to old passions and old conceptions of conflict and retribution when the passions are inflamed.

"Who can say that the new penology in its broad application has no bearing upon the permanent peace of the world."

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## I.

### *The Status of the Prisoner; Ward or Slave*

"Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States or any place subject to their jurisdiction." (Constitution of the U. S., Article XIII.)

Is the prisoner the slave of the state, a ward of the state, or does he occupy still some other status?

Has any government solved the prison problem to the point where no implication of slavery remains?

Will a world which is outlawing slavery permit the continuance of a form of slavery for the prisoner?

## II.

### *The House of Detention*

On arrest the prisoner is held for trial in what is known as a police cell, a lockup, a jail, a house of detention, etc.

These institutions in many instances serve a double purpose in that they are used to house persons awaiting trial, persons held as witnesses and also persons serving sentences for minor offenses not deemed serious enough for imprisonment in a prison or penitentiary.

The ideal is the complete separation of persons convicted of crime and serving sentences from persons awaiting trial and presumably innocent until proven guilty.

This calls for some form of house of detention for persons awaiting trial which will afford them the protection due an innocent person. The minimum standard calls for seclusion and privacy; protection from infectious disease; cleanliness, good ventilation, light and warmth, provision for sleeping in comfort, proper food, access to counsel and friends. The women's quarters should be completely separated from those of the men and under supervision of women matrons. Children should never be housed in an adult house of detention. Persons adjudged insane should never be housed in a house of detention.

### III.

#### *The Sentence*

##### A. *Fine and Costs.*

Persons convicted of minor offences are often sentenced to pay fines, the cost of conviction being assessed with the fine. Fines may be paid out of the convicted man's personal possessions or by a "next of friend" to whom he becomes a debtor under agreement to refund in kind or labor. Failure to pay the fine results in commitment to penal servitude for such a time as it may take to pay off the full amount due at the rate established by law.

##### B. *Fixed or Indeterminate.*

The prisoner convicted of crime is sentenced for a fixed or indeterminate period to penal servitude. This period may be determined by statute, by the judge at the time of conviction, limited by the statutory designations as maximum and minimum penalty, or it may be indeterminate in that the maximum is designated but the actual time affected by the conduct of the prisoner judged by a duly constituted board of judgment.

*The new proposal* is that the judge determine guilt and remand the prisoner to a reception prison for a thorough examination, basing the sentence upon the results of this examination which should determine the treatment and training necessary to fit the prisoner for return to the community outside the prison. The practice of remanding the prisoners before sentence has not yet been adopted but there is very considerable discussion of its desirability. Progress has been had in the examination and classification of prisoners.

##### C. *The Death Penalty.*

The death penalty is a heritage of the past. All primitive people in developing a penal code used death as a measure of punishment. But the law or custom was based on the desire for

revenge or retaliation. This desire for revenge was instinctive; it was an outgrowth of the struggle for existence. This struggle developed the instinct of fear because the man who was not aroused by fear to kill that which threatened him would not survive.

Supplementing and allowing full play to these primitive passions the death penalty has operated where slavery as a substitute was not practical or profitable. The death penalty will continue as long as the thought of vengeance holds sway and as long as the life of the individual is of no value to the community in supporting dependents or making payment for the social destruction which his crime has entailed. The establishment of a proper method of control of the prisoner to accomplish these ends will tend more than anything else to overcome the popular demand for the death penalty.

#### IV.

##### *The Reception Prison*

The reception prison is an institution to which prisoners are remanded from the courts after conviction and before sentence for observation and classification to determine the treatment and training which they require.

Note: The full development of this type of institution is of the future—the first such institution in the world was recently opened at Sing Sing, New York state. The system has not yet advanced to the point where prisoners are remanded before sentence.

The investigation or study of each group should include:

- (a) Family history and heredity.
- (b) Early development and later life history in detail including industrial history. As complete an analysis of the personality or mental makeup as is possible for the purpose of establishing correlations between the criminal situation and the various internal and external factors operative in each case.
- (c) Mental status of the prisoner: attitude and conduct in prison and reaction to confinement; determination of intellectual level and mental capacity by appropriate tests for feeble-mindedness, educational requirements, industrial capability, symptoms of mental disorder with careful investigation of unusual emotional reactions and peculiar trends of ideas; special study of the criminal situation with efforts to get at the deeper motives underlying various criminal tendencies.
- (d) Physical examination: abnormalities of physical make-up, general bodily condition, signs of specific and other diseases; neurological examination sufficient to detect any disorder of

the nervous system; tests to determine venereal disease, etc. All prisoners should be kept in quarantine at the reception prison until free from danger of infecting the community. Incurable cases should be sent from the reception prison to institutions for incurable diseases. Prisoners suffering from tuberculosis should be sent to special hospitals. Their cure should precede any attempt at rehabilitation.

The drug addict presents another serious problem in the penal population. Special care should be given at the reception prison to such persons and they should be kept under hospital care until the period of adjustment from the drug is over.

#### *Possible Distribution from the Reception Prison.*

1. Deportation—return of non-citizens to their home country.
2. Suspended sentence: The court waives sentence but except in rare instances does not make provision for supervision and the outcome is too great leniency.
3. "Probation" or "Vigilance."  
The court places the individual who has been convicted of crime under supervision in the general community.
4. Institution, hospital or asylum for the insane.
5. Custodial institution for the feebleminded.
6. Hospital—(a) for tubercular prisoners, (b) for incurable disease.
7. A prison or penitentiary.

#### *Classification of Prisoners.*

The examination given at the reception prison will make it possible to place the prisoner in one of the following classes:\*

1. *THE BETTER CLASS*—Prisoners who are likely to benefit by training; those who have made mistakes in life but have no grudge against society, are intelligent to a greater or less degree, have a good personality and are amendable to discipline, willing and industrious.
2. *THE ANTI-SOCIAL OR HABITUAL CRIMINAL CLASS*—Prisoners who are determined "to get even with society." Those with long criminal records, who have bad associates, vicious habits, are lazy, drug addicts or chronic alcoholics. This group may include a large percentage of prisoners of a high grade intelligence.
3. *DEFECTIVE DELINQUENTS*—Prisoners with various forms of mental abnormality, such as defective personality, constitutional defects, epilepsy, borderline insanity, etc. This

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\*The classification system at the New Jersey State Prison, by Edgar H. Doll, Ph.D., Page 4.

group is sensitive jealous, discontented, unstable, restless and temperamentally unadjusted but the intelligence level of such a group may be relatively high when compared with other groups of prisoners.

4. *SUBNORMAL PRISONERS*—The simple feeble-minded, and those of borderline intelligence whose offences are rather the result of their low intelligence and suggestibility than of unfavorable attitude towards society and whose low mentality makes it probable that they can never adjust themselves to the conditions of normal society or only after long periods of training.

These four classes of prisoners require very different training and penal institutions should be classified if possible to correspond with the classification of prisoners.

## V.

### *The Penal or Correctional Institution*

- (a) *The prison or penitentiary.*

The conception of the prison as a lock-up or jail is evolving into the conception of the prison as a community. The conception of the administrative head as a jailer is evolving into the conception of the governor of a self-expressing and self-developing community. The development of a model administration based upon the community idea will necessitate growth by slow stages and by the education of both the prison community and the administrative staff.

The old type of bastille prison is necessary for only a small percentage, perhaps 30 per cent of the prison population. The farm colony or the camp for public works will care for the others.

- (b) *The reformatory or borstal* for young offenders, as a rule from 16 or 18 to 35 years of age. The buildings of such institutions have not differed materially from the buildings of other prisons. The aim of the system has been the rehabilitation of the individual. The best features of the borstal system should be applied to all prisons and the borstal system itself will be rationalized by the application of the classification system.
- (c) *Institutions for women prisoners.*

The problem of rehabilitating the woman prisoner is more complex than in the case of the male prisoner. There is the two-fold problem of preparation for child-care and home-making and of training for self-support. This recognized need has led to the establishment of separate institutions for women. In America such institutions are largely

officered by women and are of the cottage type to permit training in house-work and home-making.

The infant child of the woman prisoner adds another problem very difficult to handle satisfactorily.

(d) *The industrial or reform school.*

This institution is for the juvenile offender. The ideal would be for the juvenile institution to be part of the educational not the penal system.

"The delinquent child indicates a delinquent community."

*Standards for Penal Institutions.*

Living conditions in the penal institutions must be such that they are conducive to the health and moral up-building of the prisoners. Cleanliness, light, adequate heating, good ventilation and sanitary arrangements in conformance with the health standards of the community are imperative.

A well-balanced and properly prepared diet is essential also in conformance with the health standards of the community. Should the prison possess farm acreage, the most approved methods of scientific farming should be applied both to afford the best training to men who may continue as farmers and to produce foodstuffs for the inmates of the institution. An efficiently run institution with coordination between the culinary and farm departments will give appreciable result in the improved physical condition of the inmates.

## VI.

*The Administration of the Penal Institution*

The first requisite of a prison system which can comply with the modern conception of the prison is to interest men of broad viewpoint and recognized ability to undertake the administration of the prison.

Nicholas Murray Butler, President of Columbia University, has pointed out that the duties of a college president one hundred years ago consisted in teaching classes, whipping pupils, locking the building and seeing that the place was clean. Today, he plans the fiscal policy of the university years in advance and gives much attention to the national and international relationships of his university.

Our conception of the duties of the administrative head of the penal institution must rise from the former to the latter level.

The head of the prison, the other officers, even the guards must be trained for their duties, appointed for merit not because of political pressure, and paid adequately for their work.

## VII.

### *Discipline*

Punishment other than hard labor is often permitted, defined and prescribed by law. Indeed, hard labor, under reasonable restrictions as required in most prisons is healthful for mind and body and, in the judgment of prisoners is a veritable boon, compared with enforced idleness. For disciplinary purposes, therefore, other forms of punishment have been instituted by prison authorities and oftentimes are of a character that amount to torture. Such forms of punishment include solitary confinement in dungeons or special cells; shackles and chains, the gag, iron-mask, etc.; reduction of food, the straight jacket, corporal punishment or flogging.

Prison discipline is still for the most part mass discipline, taking little account of the individual. The aim is to promote ease in running the prison not to train the prisoner for life.

The old brutal punishments, however, are slowly giving way to a system of deprivation of privileges.

The change began with the indeterminate sentence and parole law which made it possible to deduct as punishment time which would be allowed for good conduct. Music, recreation, motion pictures all are aids to discipline as these privileges are greatly enjoyed by prisoners and fear of deprivation is a deterrent.

Two systems based on trust have developed:

1. The honor or trusty system which has tended to deteriorate into a system of favoritism or espionage.
2. The community system or the development of the group spirit under which the inmates as a group are entrusted with the responsibility for certain activities. Thomas Mott Osborne in describing this system stated:

"It is an effort to transmute the 'gang' spirit whose essence is loyalty to the group, into a spirit of loyalty to the prison community, thereby developing in every member a sense of responsibility for the common welfare."

## VIII.

### *The Employment of Prisoners*

The fundamental purpose of the prison shop is to fit the released prisoner to take his place as an industrious member of the community

by developing in him firm habits of work and self-support and giving him the knowledge and the skill of a trade.

1. The first essential to the adequate employment of prisoners is that every prisoner be given a thorough physical and mental examination before being assigned to industry, so that the mental and physical misfits may be segregated and men placed in the work for which they are best fitted, considering their training and abilities.

2. The training adequate to provide a prisoner with the skill which will fit him for a job outside the prison postulates an industry run on a basis similar to that of an outside workshop. Production in the institutional shop must follow the lines of general production and an adequate market for the products must be secured.

The logical market for products of industries in correctional institutions lies in the supply requirements of the government and government-aided institutions, which make up the family of institutions under the central government. The problem of marketing the products of the institutional industries is, therefore, a problem of the government as a whole.

The problem of employing the prisoner involves justice to the government, the free working man and woman who must be protected from unfair competition from the prisoner workmen, the prisoner and his family.

Prison industries include:

- (a) *Maintenance and up-keep industries*—such industries include the kitchen, the dining-room, the operation of the power-house and laundry, the keeping clean of the institution and the repair and keeping in condition of the buildings and grounds.

“The administration of maintenance and upkeep divides into two types of training and of work open to the prisoner:

The first is of the housekeeping order and concerns such activities as sanitation, preparation and serving of food and care of grounds. Some of this work requires skill and intelligence on the part of the prisoner. All of it is work which must be done.

The second is in the field of skilled crafts essential in keeping in repair the prison itself, in running the power-plant and maintaining the lighting, heating, water, and sewage systems. Most of this work is of a skilled order. In fact the prison is a small city itself, in that it includes to a large degree all the problems which come up in the administration of a municipality and also in a very large hotel.

To carry on these activities comparable to those of a city and a hotel it is necessary to select from the incoming prisoners men skilled in carpentry, plumbing, steamfitting, power-house engineer-

ing, firing, cooking, baking, kitchen supervision, storekeeping, gardening, laundering and laborers who are required for cleaning.

Skilled craftsmen should have charge of the skilled maintenance operations and should be responsible for instructing the prisoner workmen assigned to their department.”\*

(b) *Farming and the development of government lands.*

Farm work as a whole is clearly beneficial to the health of the prisoners, demanding as it does a wide range of bodily activity and the contact with growing crops and animals. The accompanying responsibilities are also favorable to keeping the mind healthily aroused—especially is this true in the case of gardening, poultry raising, and caring for small fruits.

The educational value of farm work in prisons must be looked at from two angles (1) its value to the prisoner who intends to become a farmer. (2) The moral, mental and physical value of working with the soil and with animals. The physical and mental value of farming has been demonstrated in a marked degree with the insane and the feeble-minded.

The economic value of employing prisoners in farming is obvious. Prisons, hospitals and other institutions use large quantities of butter, cheese, eggs, milk, poultry, canned, dried and fresh fruits, and canned, dried and fresh vegetables.

Prisoners like other men not only like but need fresh vegetables. Vegetables are expensive to buy and often poor in quality by the time they reach an institution. If the prisons raise farm products, the prisoners can have the health-giving advantage of this food at a minimum of cost.

(c) *Road-building*, reforestation, reclamation of lands, construction work on public buildings—all have great opportunity for healthful work for the prisoner.

(d) *Productive industries.*

1. Industries should be selected on the basis that they afford opportunity for the prisoner on release to secure employment in a similar industry to that in which he has been trained in prison; and also the selection of industries and determination of their size must be based on the requirements of the government market.

2. Standards of quality must be set up for the goods so that they will meet requirements of the government market.

3. Machinery and other equipment must be modern according to the usage in outside industries in the community.

4. The management must be competent industrially.

5. The price of products must be regulated so that the consuming institution will not be penalized.

*Wage.*

Wage is as legitimate a charge on prison industries as are supervision, the cost of raw materials and overhead.

\*Report of New York Prison Survey Committee, Page 97.

A standard for wage for prisoners was set by Woodrow Wilson in an executive order promulgated for the war period which made the pronouncement that:

“Compensation and hours of labor for inmates of any institution above specified, working upon such supplies shall be based upon the standard hours and wages prevailing in the vicinity in which the institution is located. The prorata cost of maintaining the inmates so employed shall be deducted from their compensation.”

The application of this principle has not been had in the United States, however, as the wage based upon production, has in no way approached the wage paid in outside industry.

France has paid wage to prisoners ever since the Fall of the Bastille and can contribute from its experience.

The setting-up of prisoners wage should not be on the basis which brings all persons to the same level irrespective of their ability. Even in the controlled community of the institution a certain element of competition must be maintained. This is difficult to work out as the selection of workers is limited by psychological tests and other data which closely confine the individuals to the work for which they have ability.

The group for whom it will be most difficult to work out the wage system will be the inmates assigned to maintenance activities, who should be paid from the moneys paid to the institution for the maintenance of inmates employed in the productive industries.

A study of the growth of prisoners wage will be of great value to the prisons and might be part of any international wage study.

#### *Vocational Courses in Connection with Prisoners Work.*

To supplement the daily work and develop intelligent workers in the shortest possible time, vocational courses should be given in connection with every skilled trade in the prison. In such courses prisoners can be taught by practical instructors facts of the trade which would require years of individual experience to acquire.

### IX.

#### *Education*

##### *Academic, Moral, Physical*

The educational work in most prisons is perfunctory, little more in the ordinary prison than rudimentary instruction to illiterates.

Confinement in a prison affords an excellent opportunity for creating interest in reading, speaking and writing correctly, absorbing in-

teresting facts concerning government and in regard to health, sanitation, food and the general care of the body. This great opportunity should not be wasted.

The school extension activities which are found in the community outside the prison should be called upon for assistance to the prison community. Methods of home study, itinerant lecturers, radio lectures, correspondence work, library facilities, educational motion pictures—all have their place in an adequate educational program for the prison.

The International Y. M. C. A. has developed a program of health, education and recreation which should also be carried into the prison.

The therapeutic value of music is attracting greater attention each year.

“Into the prison, where discipline in its right sense is a prime requisite, a feeling of social well-being and communal unity must be introduced before any correction can take place. Music is an external stimulant which arouses the emotions and thereby the desire and potency to live, function, get busy and be happy—The greater realization of the relation of music to conduct is essential to the efficient administration of the penal institution.”

“The Utilization of Music in Prisons and Mental Hospitals.”

WILLIAM VAN DE WALL.

The religious forces in the community should be held responsible for providing ministrations to the prisoner on the basis that he is a human being with the same requirements as other human beings in the community.

## X.

### *Specific Disabilities Caused by Prison Sentence*

A prison sentence usually involves certain specific disabilities such as:

1. Loss of citizenship.
2. Loss of presumption of innocence in subsequent prosecutions for crime.

Additional disabilities which are possible include:

1. Loss of marital rights.  
(Conviction of felony may be held as ground for divorce.)
2. Loss of power of procreation.  
(Vasectomy may be authorized for a prisoner who is determined to be incapable of producing offspring mentally, morally and physically sound.)
3. Loss of rights to ordinary burial.

(The body of the man who has suffered the death penalty may be used for scientific purposes.)

## XI.

### *The Prisoner's Family*

The child of the prisoner often pays the most severe penalty for the crime.

"Broken homes, loss of property, accumulation of debts, lowering of the physical endurance through overwork, insufficient food and improper living conditions, absence of a mother's care due to her employment outside the home, the interruption of schooling," is the indictment of the Children's Bureau, U. S. Department of Labor of the treatment afforded the prisoner's child.

Does not the prisoner's child need consideration in any program of child welfare?

It is also of paramount importance to maintain contact between the prisoner and his family. An outside agency can only render assistance in this connection when the confidence of the prisoner is secured and at his request approach is made to the family.

## XII.

### *Readjustment of the Ex-Prisoner After Release*

Some men have a chance when they get out of prison—a chance to commit again the crime for which they enter prison. They have protection in their old life of crime. The only requisite is the guarantee of the old gang to the politicians that they will be on the level with their pals. Every clever man coming from prison to a great city has this opportunity. Is it to be wondered at when he sees all around him political corruption, that he takes the chance and continues in the old life?

Protection to the man coming out of prison, protection to do right is the great new thought. The ex-prisoner should have the guarantee of physical health, mentality and industrial ability sufficient for self-support. This guarantee makes possible the protection to the worker of the labor organization or craft guild in his particular line, and the group power of the honest working man can be substituted for the group influence of the old gang.

To connect the ex-prisoner with the agencies for good, to open up for him a job which corresponds to the work he has successfully carried on in prison, is the task of those who would really help. The

person who would make this connection should be informed well in advance of the release of the man. He should know his trade, his ability in this trade, what social or religious activities he would seek, what weakness he needs to fear and wherein his ambition lies.

The man who welcomes the ex-prisoner to the world outside, who introduces him to his new life needs a sympathetic understanding of the prisoner and yet must have a practical knowledge of the world into which the man is going and must be big enough to be the friend not patron.

Many attempts have been and are being made to adjust the man released from prison to his new environment. Humane people possessed of human sympathy have established Prisoners Aid Societies, which give old clothes and wood-yard jobs to the ex-prisoners.

A system of parole or supervision for a period, until the expiration of the maximum sentence, is widely used. It is impossible to check the value of this system up to the present time. The inadequate training given prisoners, the limited numbers of parole officers, small salaries and inadequate training of such officers have all militated against success.

The readjustment of the man returned to his own country after deportation from a foreign prison presents an additional phase of the after-care problem.

### XIII.

#### *Pardon*

Manumission from penal servitude is as a rule vested in the hands of the highest executive of the Land, the Sovereign, the President, the Governor of the State, etc. When granted it removes all disabilities attendant upon imprisonment.

The problem is to safeguard this power and protect the executive from the false pleas for clemency, so that pardon may be granted only in the case of the deserving prisoner.