

Winter 1932

## Have Our Prisons Failed

Sanford Bates

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

Sanford Bates, Have Our Prisons Failed, 23 *Am. Inst. Crim. L. & Criminology* 562 (1932-1933)

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.

## HAVE OUR PRISONS FAILED?

SANFORD BATES<sup>1</sup>

"We conclude that the present prison system is antiquated and inefficient. It does not reform the criminal. It fails to protect society. There is reason to believe that it contributes to the increase of crime by hardening the prisoner. We are convinced that a new type of penal institution must be developed, one that is new in spirit, in method and in objective. We have outlined such a new prison system and recommend its adaptation to the varying needs of the different States."

These are not the words of a prejudiced, irresponsible agitator. They represent the conclusions of a group of conservative and distinguished people who formed the personnel of the President's Commission on Law Observance and Enforcement, popularly known as the Wickersham Commission.

The more or less unanimous editorial agreement with this conclusion indicates the general opinion that our prison systems have failed. "Prisons Take the Count", "Prison Reform Called For", "Our prison methods indicted", "Condemned", "A great American failure", "The Prison's Guilt", "Prison a Failure", were typical of the headings from many of the newspaper editorials of the country. Occasionally a newspaper would rise to remark, as did the Syracuse Post Standard, "If one wants a target, he will hardly find an easier one than prison administration. It has always been so. And, at the risk of rousing the incurable optimists, one can readily hold that it will always be so. A prison that was really pleasant would be a prison no longer. It would be a reversal of the purpose of prisons." The attitude of the average newspaper, however, was expressed by the Los Angeles Express—"A blush of shame will come to the cheeks of Americans when they read what the Wickersham Commission tells President Hoover about the prisons of the country."

Before assuming that all the prisons of the country, taken together collectively, have failed, we ought to have clearly in mind what is, or should be, the purpose of a prison. If that which we desire is an institution designed to make men suffer for their misdeeds, to bring such misery and degradation upon their heads that they will not want to repeat the offense for which they stand convicted, then

---

<sup>1</sup>Director of the Bureau of Prisons in the Department of Justice, Washington, D. C.

we have no right to criticise our prisons as failures, if they are designed with that end in view.

If they are to be unpleasant mediums for carrying out society's penalties upon the luckless recipient of its retaliatory measures, they must be disagreeable places.

"The prison has failed as an educational institution", says the Wickersham report.

The country provides educational institutions for those who can profit by education. Is it reasonable to expect that an institution designed for the purpose of punishment and having in its confines only those who have been unable to profit by the lesson of our school systems can succeed as an educational institutions?

"The Prison has failed as a business enterprise."

Would the business interests of the country, employers and employed alike, hail with delight the establishment of fully equipped and efficient factories in all of our penal institutions? Can it be imagined that a business enterprise presided over by untrained and low salaried men, a factory whose work is carried on only by those who have broken the law, who are of enfeebled mentalities and whose strength and skill have been impaired by the ravages of dissipation and indulgence, from whose pay roll no one can be discharged and in whom there is no incentive for work or better work, could be anything but a failure?

"The prison has failed as a disciplinary institution."

One must have lived in the confines of the average State penitentiary, in daily contact with large numbers of scheming, conniving individuals who have been selected from the community for sequestration in an institution, not because they can be easily disciplined, but because drastic measures have already become necessary to prevent injury to the public. It may have been at the cost of life, not only to the prisoners but to the employees, but the frontiers of our prisons have been maintained. Whatever may have been the deep, underlying causes of the prison riots of recent history, the number of men who have successfully made their escape from such prisons can be counted on the fingers of one hand. It may have taken steel and stone and machine guns to hold them, it may have cost the lives of a few prison officers, but they have not escaped and the public has been protected from any extension of their depredations beyond the prison gates.

No, it is hardly fair to charge the prisons with failure on any of these counts. Those who are sent there are failures indeed and it

may be candidly admitted that such men who have demonstrated their utter incapacity to live at liberty and in harmony with the laws of their community have not in the past often made better after a term in prison. They may well have been made worse. Is this entirely the failure of the prison, or is it as well the failure of the social conditions which produce its inmates.

The findings of Dr. and Mrs. Sheldon Glueck to the effect that 60 per cent of the graduates of a state reformatory in the East relapsed into crime was hailed as convincing evidence of the failure of the reformatory system. A close study of the facts presented in this remarkable scientific study demonstrates, however, that all but four single individuals out of the five hundred cases selected for study were not only failures when they entered the reformatory but many of them, in fact, most, had showed repeated inability to adjust themselves in the community. The fact that twenty per cent of the cases so studied eight years after their discharge from the reformatory had had no contact with the law and that twenty per cent more had had only slight peccadillos charged against their records, is not a surprising or discouraging disclosure.

In his recent book on "The Human Mind" Dr. Karl Menninger says that the rate of cures in insanity is about twenty per cent and considers it cause for gratification. Society has yet to find a cure for cancer, Brights disease, meningitis and many of the less serious forms of epidemic distempers which occasionally visit the human race to its great danger and dismay.

But in all these instances those charged with the duty of bringing about a cure have the active and anxious cooperation of the patient.

The outstanding and, at times, seemingly insuperable difficulty in the cure of conduct disorders is the continued presence of a stubborn, volitional process in the individual. Physicians may diagnose, scientists may prescribe, and opportunities for reformation may be presented but when conduct disorders are to be cured all of our social doctors, from the humblest case worker to the warden of the penitentiary, are more or less powerless to control the volitional processes of the individual.

Many of us have an inevitably curious mixture of ideas as to the purpose of our penal institutions. Which makes the public more indignant, to be told that prisoners are mistreated, locked in solitary cells, strung up by their thumbs or denied contacts with the world outside, or to be told that, after all, the penitentiary is not so bad,

one has his three meals a day (albeit at an average cost of eight cents per each), his moving pictures, his baseball games, his pipe and daily newspapers? The burlesque of a modern prison apartment which one sees in the Broadway Revue with the law breaker enjoying all the benefits of a private telephone, a manicure and his personal chef, may bring a laugh but, underneath, such paradoxes provoke almost as much resentment as do the disclosures of even a Wickersham Commission.

I quote from a recent letter of a United States District Judge:

"Lately I have noticed many articles in the papers, magazines and reports of commissions in regard to the very bad condition of United States Prisons, and though it might be . . . encouraging to learn that in my district many people consider the United States Penitentiary at Atlanta, Georgia, and the United States Industrial Reformatory at Chillicothe, Ohio, as health resorts and as places where the necessities and luxuries of life are given them free of charge, and where they can obtain in industrial education without expense.

\* \* \* \* \*

"Many of them consider them as their only chance in life to obtain an industrial education without expense. Government for providing them with this opportunity.

"However, unfortunately, our institutions of higher learning like the Atlanta Penitentiary . . . are not open to the general public, but a person desiring a course of training in these institutions must commit a crime against the United States in order to be sent there."

After discussing the case of a young cripple who, in the Judge's opinion, committed the crime with the intent to receive a sentence, he ends:

"I would suggest that in view of the high regard in which the United States Penitentiary . . . are held by many people and their strong desire to avail themselves of the advantages of these institutions of higher learning, that you change your entrance requirements, so that a person does not have to commit a crime to obtain admission thereto."

On another occasion a Board of Public Welfare in a North Carolina County complained as follows:

"There have been a number of men from this county who have served terms in the Federal Penitentiary at Atlanta, Georgia, . . . Upon their return they invariably report good treatment and better food than they ever had in their lives (at 24 cents a day) and dilate upon the baseball games, moving picture shows and other entertainments arranged at the penitentiary. . . . I feel that a term in the Federal penitentiary should be made less attractive to a class of men who are inclined to regard it as a vacation from family responsibilities."

Can it be possible that these two writers are talking about the same type of place which incurred the wrath of the Wickersham Commission's investigation. Perhaps it is, and perhaps they are both partly correct.

Perhaps the same people who shudder with horror at the report of "cruelty" in some of our prisons would writhe with righteous indignation at any attempt to kill any fatted calves at Government expense for those of their brethren who have visited the fleshpots of an American urban community.

Of all parts of the American penal systems which have incurred the wrath of impartial investigators none has been more deserving of criticism than the average county jail. Dirt, poor food, lack of sanitation, fire hazards, overcrowding, infested with vermin, absence of any kind of work or educative processes, usually complete and utter idleness and lack of proper medical care are some of the counts in the indictment against the county jail. It is a curious fact, however, that in many instances accompanying these deleterious influences are continued examples of leniency on the part of the sheriffs and jailers. Rich bootleggers are given opportunities to absent themselves at will. Contraband is allowed to enter the jail and on more than one occasion jailers have been convicted of contempt of court by permitting undue and improper privileges of their charges. The language of the court in one of such cases is significant.

"The sheriff must keep the prisoner confined in jail and grant him no privilege or indulgence inconsistent with his status as a prisoner and permit no relaxation of the confinement of his person, not only that he may at all times be within the control of the sheriff, but also, that the imprisonment may be actual, irksome, and a service of discomfort, so far as confinement in the jail may produce such results." (*State ex rel Walter S. Hallanan v. H. H. Cyrus, Sheriff*, 83 W. Va. 30.)

Thus do we see as companion evils in our penal system lax and unintelligent discipline resulting alike in the presence of degrading influences and ill-advised, although sometimes well-intentioned, leniency of treatment.

Life is conduct, conduct has to be controlled, partly, perhaps, by education, mostly by precept and example and to some degree at least by a system of rewards and penalties. Once having admitted the power of the State to regulate conduct and prescribe rules, it must have the power to reward for compliance and to punish for infractions of its rules. It may be that we are giving too much attention

officially to the infliction of penalties for misconduct and not enough to rewards for good behavior.

The perplexing problem confronting the prison administrator of today is how to devise a prison so as to preserve its role of a punitive agency and still reform the individuals who have been sent there. If the prison, as was originally conceived, is to stand as the last milestone on the road to depravity, if it is to represent that ultimate of punishment which must follow a refusal to obey the rules of society, and if, as has been so generally contended, its principal object is to deter others from committing depredations which would bring them within its shadow, why must it not be made as disagreeable as may be? If punishment is effective to deter, it would seem as though the more punitive the prison was, the greater would be the effect of deterring others. If we execute men for murder, then why do we hide them away in the gray dawn of the morning and allow only a handful of witnesses? Why not make this a great object lesson in deterrence and conduct the performance in the public square? Why should the sheriff of Cook County, a few years ago, have been so considerate as to allow a man awaiting execution to recover from an attack of indigestion before seating him in the electric chair?

It may be that the prison of a century ago was designed with the sole thought of making its inmates unhappy. Certainly the architecture of many of them will give that impression. From the "Rules and Regulations for the Government of the Massachusetts State Prison, with a description of the edifice, An Act of Legislature on the subject and remarks on the present state of the Institution." Dated 1811, we read:

"The Massachusetts State-Prison, or Penitentiary, stands on the westernmost point of the peninsular of Charlestown, at Lynde's point, a pleasant and healthful spot, commanding a rich, variegated and extensive prospect. . . . The foundation is composed of rocks, averaging two tons in weight, laid in mortar. On this foundation is laid a tier of hewn stone, nine feet long, and twenty inches thick, forming the first floor. The outerwalls are four, and the partition walls two feet thick. . . . The second story is like the first, except that the outer wall is but three and one-half feet thick, . . . with double glazed windows, double grated with iron bars two inches square. . . .

"Competent judges pronounce this to be among the strongest, and best built prisons in the world. It has these advantages, over other building of this kind, it can neither be set on fire by the prisoners not be undermined. The walls are built of hard flint stone, from six to fourteen feet long."

When the sole purpose of a prison was to make men miserable there was nothing particular to be gained by beautifying the architecture, by attempting to cure any loathesome disease which the men might have, to educate them or even to improve their personalities except, of course, in so far as the will to commit crime has been terrorized out of them.

Why has the revolt against brutality in the prison continued to grow since the dynamic attack of John Howard 150 years ago? Was it just plain pity for those who had done wrong and the feeling that many of them may not have had a fair chance to succeed? Was it the recognition of the fact that enfeebled bodies, inadequate brains and damaged souls are somehow community responsibilities? Or was it the repeated insistence of scientists that, after all, in the commission of crime, the human will had little opportunity for free and untrammelled action? Whatever may be the cause, the last one hundred years have seen a remarkable improvement in prison conditions. We have insisted on punishing people—but within limitations. We must make them unhappy but must do it in a more kindly spirit. We confront the almost impossible and quite anomalous task of at once making our inmates sorry they committed the crime but glad that they went to prison for it. Now we are assailed by the horrible doubt that in mitigating the terrors of the prison commitment we may have laid our communities open to danger. We may as well agree with the Wickersham Commission to the extent of admitting that it is still too early to let such doubts overcome us. We may say in Scriptural fashion, "Oh, Prison, where is thy sting?" but it is noticed that the inmates will walk out whenever the door is opened—and sometimes when it is not. There are enough riots, escapes, intrigues and the solicitation of political pressure among prisoners to reassure us that many of the men, at least, are not being coddled into a state of complete satisfaction with their surroundings. It will be sometime yet before we shall have any considerable waiting list of people anxious to break into our best penitentiaries. After all, the most precious possession of the normal man is his freedom to go and come. "Give me Liberty, or give me death," said Patrick Henry, and so would many of us if we were offered the alternative of an indefinite confinement in a small though sumptuous apartment and our liberty to choose our environment, however humble it might be.

While apart from one or two sporadic attempts, there has been no thorough and scientific evaluation as to prison treatment, either as to its therapeutic effect upon the men who have experienced it,



or the deterrent effect upon the men who have not. The general assumption has grown, however, and is now fairly well recognized that mere residence in a prison will not in and of itself improve the personalities of its inmates and that a prison cannot be unpleasant enough to sufficiently deter all potential law breakers.

To what extent these newer ideas have impressed themselves on penologists may be indicated by the language contained in the report of the Fifth Committee made in the summer of 1931 to the Assembly of the League of Nations on Penal and Penitentiary questions:

"A penalty can no longer in these days be regarded merely as the infliction of pain or the expiation of a crime. Apart from quite exceptional cases, when the criminal has to be *eliminated*, a penalty is to be looked on as means of *readapting the offender to social life*—as a means of reclamation. It is moreover this view of the nature of punishment which has contributed to the great development of penology.

\* \* \* \* \*

"If, in the immense majority of cases, the penalty is regarded as a means of reclaiming the delinquent, and if it is intended to influence the whole character of the criminal, it must obviously not be executed in a barbarous spirit, as then it would fail in its real aim, which is to reform and humanize the delinquent."

It seems to me the controlling reason which is changing and will still further alter our prisons from places of misery to institutions of constructive discipline will not be any of the reasons quoted above, but a growing conviction that inasmuch as the first duty of our penal law is to protect society; that society is, in fact, more fully protected through the restoration of prisoners to society as better men and that in order to do this certain mitigations in prison punishment must be made.

Many of the critics of our prison and reformatory system become impatient at the slow progress from day to day. We have only to look back 50 to 75 years, however, to discover what significant changes have already taken place. Thousands of "prisoners" are today in honor camps, restrained only by their own sense of honor. The ball and chain, the iniquitous lease system, the shaved head, the water cure and in most instances the striped suit and the dark solitary are things of the past.

Arthur Train in "Puritan's Progress" tells of a Massachusetts prison in which in 1837 a man was discovered "confined in a dark room in a cellar where he had lived for 17 years. He had protected himself against cold by stuffing hay through the cracks in the door,

his food being passed to him through a wicket." The daily menu of the prison of a hundred years ago would be insufficient for a healthy dog to live on today.

Compared with these, the simple yet sustaining menus in most of our present day penitentiaries, the more humane system of punishments and the growing disposition to use the deprivation of privileges instead of the enervating or debasing types of punishment, the successful effort to get prisoners out of their cells into shop or farm or into the yard each day for certain hours, the growth of privilege for letter writing, education, moving pictures, radio, libraries and other improvement facilities, and the development of the road camp system are evidence of their growth. The great increase in the use of probation and parole, the attempt to employ prisoners in industries and vocational pursuits, the introduction of carefully managed libraries, the insistence upon medical prophylaxis, the success of many States in classifying their prisoners into a variety of institutions, the recent development of new types of prison architecture, the belated discovery that prisoners are individuals and must be treated as such if any attempt at their cure is to be effected, are hopeful developments to the credit of the last two or three decades.

To establish a prison environment which will not be a welcome asylum to the man who has lived in squalor and degradation and yet not be a place of continual torture and deprivation to a man of finer sensibilities, is considerable of a task in itself. While one must of necessity insist upon equal treatment for all offenders and resolutely object to the granting of special privileges to the influential or wealthy prisoner, nevertheless, the special needs of individual personalities must in some manner be discovered and supplied.

At this point the skeptic will again rise up to inquire what will be result of new and more adequate buildings, decent living conditions, improved diet, better qualified prison guards and efforts to educate the individual. Will it remove the fear of punishment? Can we improve our prisons and yet deter the potential criminal? I believe we can. While our new prison system is to be built around the concept that all its prisoners must be returned to society and that society is not protected unless they are returned more efficient, more honest and less criminal than when they went in, at the same time I believe that even such punishment need not lose its deterrent value simply because it is constructive. A prison need not have dirt, idleness, graft and cruelty to deter persons from committing crime. A strict program of prophylaxis, industry, enforced education and fair

discipline with a modicum of constructive recreation will certainly not induce people to commit depredations on society. If the experience of punishment makes possible an acquaintance for the first time with some of the higher things of life, it may still be very desirable disciplinary experience.

There is no wise prison man but who admits that even with all the helpful influences that may be brought to bear upon the modern prison it will still be better (for the prisoner himself) if he be kept out. There comes a time in the community treatment of many an offender when he becomes unmindful of precept, immune to good example, heedless of warnings and advice and positively dangerous in his activities. Social work, psychiatric diagnosis, probation and Christian sympathy also are futile. The possibility exists that a period of enforced discipline, of daily regimen, of compulsory hygiene, education and introspection may do what all else has failed to do.

Nevertheless, there is an abnormality about prison life which cannot be gainsaid. It is this very artificiality of existence which is one of the obstacles in the way of realizing some of the newer ideals in prison management. Our hopes for prison improvement will not be difficult to define. A splendid set of ideals was laid down by the American Prison Association in 1870. This organization of practical men and prison reformers has continually kept these ideals before them. The question of education, physical rehabilitation, training, recreational possibilities and, in general, mental and moral improvement of inmates looms larger in its discussions than do the more practical matters of prison management.

Why have these ideals not been more generally and promptly realized?

First, because the buildings in which these treatments are to be carried out were built in an age when the purpose of the prison was entirely different. Second, because, being a prison guard, or even a prison warden, has not yet been recognized as a profession. Much is now being done to remedy both of these defects. Schools for prison employees are rapidly being established. College graduates are taking up prison work in larger number, newer ideals of management are gradually being inculcated into institution employees.

Third, the confusion of ideas which ties up the problem of prison labor with the matter of general unemployment on the outside. We have not yet clearly enough recognized that the idle man is a liability, whether inside or outside the walls, and that society has as much of an interest in keeping its prisoners busy and fitting them for

a law abiding place in society as it has in providing employment for the general population.

And finally, the critics of our prison administration must continually bear in mind the difficult personalities that go to make up the average penitentiary population. Occasionally a mother loses her patience and places her child in a dark solitary closet. Corporal punishment has until quite recently been considered necessary to avoid spoiling the child and is now practiced in many public and private schools. Likewise, the control of difficult and dangerous personalities in our penal institutions is not an easy problem to handle. One reason why we have not had better men to manage our prisons is because of the dangerous and difficult associations connected therewith. A personality that can withstand continual association with human depravity and be constantly assailed by the anxieties and hazards which beset the average prison warden must possess more than the usual amount of physical, mental and moral stamina. In all the varied fields of human relations it would be difficult to imagine a task requiring more of intelligence, patience and the will to serve than is required of the prison warden under the newer ideals. He will need the respect and support of the public.

Even with the provision for opportunities for improvements, with steady employment at productive labor, with a force of tactful and intelligent prison guards, with suitable surroundings, nourishing food, elevating literature and stimulating recreation, no permanent reformation can be expected until in some mysterious manner the will to reform can be instilled into the individual personality. There is no doubt much to criticize in the management of our prisons and there will be until there is a deeper public recognition of the need for more money, more intelligence and more toleration.

But even if we were not able to point out the many directions in which prisons have been materially improved through the course of the last few decades, the situation would be encouraging in two important respects. First, it is quite evident that the time has gone by when the secrets of the prison can be kept from the public participation. No longer does the Warden say, "This is my business and mine alone." Governors, legislatures, social workers, investigators, friends and relatives and in many cases groups of sightseers have thronged our prisons both inside and out. The manner in which our prisoners are treated has become a public concern.

Second, it is quite evident from the approach which the Wickersham Commission makes to the whole problem that the old stand-

ards of prison management have been entirely discarded. The Wickersham report could not have been written as it was if the main and only purpose of the prison was to punish. It could not have received the public approbation which it did, had it been written fifty years ago. After all, in spite of its criticism and the dark picture which it paints, the great service which the National Commission on Law Observance and Enforcement has rendered in its report is the endorsement of these new standards in prison management and the general recognition that the ideals towards which enlightened prison reformers have been reaching forward for years are the sound and hopeful standards. No better definition of a prison was ever made perhaps than that recently enunciated by our present Attorney General, who has rendered a great service to the prison system of the Federal Government. Mr. Mitchell says:

"The prison of the future should be at once a disciplinary school for those who can be reformed, a place of permanent segregation for the incorrigible and a laboratory for the study of the causes of crime."

If the Wickersham Commission felt that the plain duty of the prisons of the country was solely to carry out the punishment imposed by the court, their criticisms would have been of an entirely different nature. They might well have found as many instances of too lenient treatment or a disposition to make a prison experience too attractive. They must have accepted to some extent the definition of the Attorney General or they could not have animadverted at such length on the dangers of repressive and brutal disciplinary systems. This in itself is a matter for congratulation.

The acceptance of these new standards makes it obvious therefore that in place of the simple, easily administered functions of the traditional prison, we have imposed upon our wardens and superintendents a task of surpassing difficulty. It seems to be generally agreed that delinquent personalities cannot be basically changed by the punitive approach. They may be subdued or terrorized but not fundamentally altered. Can they be cured with modern methods and with the expenditures of an amount of money within a reasonable limitation by our communities?

In the same way that the failure of the repressive system is said to have been demonstrated, there is not lacking evidence, especially with our women's reformatories and some of our more enlightened state prison systems, that the modern methods are more effective in the protection of the public.

It may be shown that the highest percentage of success is among the "graduates" of those institutions which have the least aspect of punishment in their curriculum. While much allowance must be made for other social factors it can be shown that the States wherein a liberal policy is being pursued with respect to probation, parole and well devised prison systems have succeeded to a greater extent in holding the crime rate down than have communities wherein a reliance is placed upon the older methods.

We need not say then, that the prison has failed. It has lived up to the expectations of an older generation. We are now demanding newer accomplishments. When we have provided the necessary tools therefor we can only hope that there will be as much success in realizing the newer ideals as there was in carrying out the old.

We have ideals enough, but the accomplishments of the new program will require an extraordinary amount of perserverance, intelligence and faith in the ultimate worth of human nature, but it can be done.