1941

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Recommended Citation

Hector Beeche, Inspection of Prisons in the Administration of Penal Institutions, 32 J. Crim. L. & Criminology 310 (1941-1942)

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INSPECTION OF PRISONS IN THE ADMINISTRATION OF PENAL INSTITUTIONS¹

Dr. Hector Beeche²

The fact that prison administration requires a special organization sufficiently autonomous to permit the development of an independent and effective program has been definitely admitted in Penal Law and is a guarantee of success in prison administration.

I. *Systems of Organizing the Central Administration of Penal Institutions.*

We shall not discuss here the organs needed for directing and supervising prison administration nor the establishments necessary for improving the methods of incarceration of law-breakers, but we will say that two systems of administration have been proposed: administration by one person and by a board. In addition there is also a mixed system which in our opinion is most suitable for experimenting and for those countries which are not in favor of very radical changes.

Under the first system the administration of prisons is entrusted to one government bureau, as is the case in the United States, Uruguay, and Russia. In the first country there is a Bureau of Prisons in the United States Department of Justice; a director, who is immediately under the Attorney

General, has charge of this Bureau. In Uruguay the National Bureau of Penal Institutions (*Dirección General de Institutos Penales*) has charge of these institutions, and it includes the following sections: administrative, supplies and sales, financial, health and hygiene in prisons. The National Society for the Welfare of Prisoners and Former Prisoners and all other agencies necessary for a good administration are also attached to this Bureau.³ The main reason the government of Uruguay created the National Bureau and deprived the Supreme Council of Prisons of its autonomy and its authority to make decisions by allowing it merely an advisory function was the desire "to create a scientifically coordinated organization which would permit to harmonizing the strict application of the provisions of the Penal Code with a viewpoint according to which the crime and the delinquent are concrete and separate entities, so that the penalties provided by the Code may be made to conform as well as possible with the above mentioned viewpoint."⁴ This could not be done with the Supreme Council constituted as previously, because as stated in the above quoted report the

¹ Translated from the Mexican legal periodical "Criminalia" Vol. VI, No. 8, April 1940, by Anna Kalet Smith, United States Children's Bureau. A few changes have been made by the author in the original for the purpose of translation and adaptation.

² Member of the National Council of Prisons of Costa Rica.

³ See the very interesting report by Dr. Juan Carlos Gomez Folle, Director General of Penal Institutions of Montevideo and one of the best known penologists on the Continent; the report covered the period for September 1934 to May 1938.

⁴ See the above quoted report, page 10.

"experience of such an organization shows disadvantages of execution and the members of the Council, occupied with other work, were many times unable to attend with the necessary promptness to urgent business." Dr. Gomez Folle points out some other defects showing that the Council failed to follow the path prescribed by law. For this reason, as we have stated previously, the Executive Government decided to transform this Council into an advisory body which would also watch whether the penal laws are observed, propose changes in them and advise on plans for prison buildings and their administration.⁵ Thus the Supreme Council remained simply as an advisory agency while the National Bureau of Penal Institutions was given the authority to make and execute decisions. The results of this arrangement have been highly encouraging in view of the great progress made by the penal institutions in Uruguay. In order to draw a conclusion as to the value of the unipersonal system, it seems pertinent to ask whether the improvement has been due solely to the change in the methods of administration or to the distinguished figure of the great criminologist who is in charge of the

National Bureau and whether in other hands the prison administration in Uruguay would have reached the same degree of progress.

The second system—administration by a board—has been much developed in Cuba where the Supreme Council of Social Protection (*Consejo Superior de Defensa Social*), consisting of experts in various fields of public service, is in charge of the execution of sentences and the organization of the work for the prevention and effective checking of delinquency.⁶ In Mexico there is a Supreme Council of Protection and Social Welfare (*Consejo Supremo de Defensa y Prevision Social*); in Peru the General Inspection of Prisons consists of a board of experts; in Brazil there is a Council on Prisons. I do not mention Costa Rica, because despite the fact that Section 102 of the Penal Code provides that the Ministry of Justice organize a National Council of Prisons, no regulations on the functioning of the Council have so far been issued, and the Council has been limiting its work to deciding cases of release and presenting some reports prescribed by law, so that we have in Costa Rica no adequate agency for directing prison administra-

⁵ See previously quoted source, page 8. Dr. Gomez Folle's opinions have a great technical and practical value; the First Latin American Congress of Criminology held last August in Buenos Aires approved his plans for dealing with vagrants and habitual beggars and for the establishment of a correctional school for in-adaptable persons. These plans must be the same as those described on pages 126 ff. of the above mentioned report. We urgently recommend the reading of the report from which one can realize the great progress made in Uruguay in penal matters due to Dr. Gomez Folle's efforts and energy.

⁶ See in "*Biblioteca Juridica de Autores Cubanos y Extranjeros*, Volume XXIV, entitled "Code of Social Protection, briefs and reports relating to the Code with an appendix on the law on the execution of sentences." This work contains the reports presented by the commissions which prepared the various parts of the Code of Social Protection which recently went into effect, and the law on the execution of penalties. The authors were Dr. Armando M. Raggi and Dr. Israel Castellanos, distinguished Cuban criminologists whose works are well known in America.

tion, however singular that may be.⁷ We lack information on the results accomplished by the board system in the previously mentioned countries. In Cuba where administration of prisons has been recently reorganized it has been so far impossible to observe the results.

The mixed system is in force in Italy, Argentina, France, and some other countries. Under this system, the uni-personal method of the National Bureau of Penal Institutions was adopted but at the same time an Advisory Council of a technical nature has been retained. In some cases the Council has the authority to make decisions, particularly as regards release on parole and other important matters.

II. *Essential Aspects of the General Inspection of Prisons.*

We shall refer again in this article to these systems and their advantages and disadvantages. For the present let us examine the place of general inspection of jails and prisons within the three types of administration mentioned by us. Formerly the functions of the bureau of penal institutions were very simple because the simplicity of the administration made it difficult to separate them; but after the introduction of new doctrines of penology the

methods of inspection have been changed considerably and it is desirable to know the exact functions of inspection in the new penal science.

In some countries inspection of prisons has been abolished because it is believed that there is no need for it after the National Bureau has assumed all the functions of prison administration. In other countries the function of inspection and supervision has been entrusted to the Council. We believe that one or more officials should be charged with visiting prisons and that the manner and purpose of these visits are an important problem.

Formerly the conception was prevalent that the inspector had to be a gentleman who arrived unexpectedly at the prisons and in this way surprised the warden and his employees in the act of torturing the prisoners; and this must have furnished abundant material for sensational press stories. Motion pictures often use this kind of plot and crudely present conditions which are disappearing in all the civilized countries. The inspector, as we conceive him, should not be an individual going from institution to institution to collect gossip about prisons, nor a monster intended to frighten the director or the employees. Such a

⁷ At the time this article was translated into English and about 18 months after it was written, the Congress of Costa Rica passed a bill for a new Penal Code which provides for a good system of prison administration. Under this Code a Bureau of Prisons is to be established which according to the bill was to be placed under the Department of Justice, but which the Congress entrusted to the Department of Public Safety for practical reasons: this Bureau will be in charge of a Director General of Prisons who will also be the Chairman of the National

Council of Prisons. This Council is to consist of three members and is to have jurisdiction over the above mentioned Bureau. Obviously, the system soon to become effective in Costa Rica would be of the mixed type. See bulletin "Drafts of the Penal and Police Code," Government Printing Office, San Jose, Costa Rica, 1940, p. 21. The new draft of the Penal Code, discussed in the article by the author entitled "The Bill of the Penal Code of Costa Rica," was published in "Revista Penal de La Habana," Volume II, No. 9 and 10, September-October 1940, p. 343.

primitive conception would destroy the order and discipline of these institutions; it would be dangerous to present the prisoners as victims, as this would create difficult situations for the directors.⁸ Moreover, to expect that the inspector would bring forth reports of medieval procedures and extraordinary wrongs shows absence of trust in the administration or in the system on the one hand, and an inadequacy of inspection on the other hand.

Quintiliano Saldana, the well-known professor of the University of Madrid and Director of the School of Criminology, whose recent death has been a real loss to the science of penology, described with great ability this un-

wholesome tendency which modernistic pedantry seeks to foster and which he calls "anti discipline."⁹ The same author also criticizes with abundant reason the unwholesome curiosity of the public and of a certain part of the press which by its careless and supposedly humanitarian comments interferes with the reforms which must be carried out quietly in the prison.¹⁰ Thus inspection is delicate work which can be entrusted only to trained and experienced persons with a special tact and appropriate knowledge.

Statements by writers on prison personnel and resolutions of the International Congresses on the same subject also apply to prison inspectors.¹¹ Suit-

⁸ This danger was pointed out by Juana Stevens, who stated as follows: "In any information not obtained by himself the Director should explain the situation and prove, if this is the case, the inaccuracy of the report. This is particularly necessary since the employees may fail to report to their superiors the criminal acts known to them and may be silent in investigations made without their superiors' knowledge. Any other procedure would be unfair to the Director and would weaken the authority which he must maintain over his staff."

⁹ "The authority is undermined, the respect is replaced by scorn and all spiritual relationship of confidence and trust between the convict and the person training him fails if there intervenes between them the shadow of an intermediary with official status (although deprived of technical authority) asking for complaints, causing well-founded or unfounded objections and seeking to give aid which would be noble if it were not inappropriate or harmful. Such is the systematic anti-discipline, determining cause of lack of discipline in prisons." *Revista de Criminología, Psiquiatría y Medicina Legal*, Buenos Aires, Vol. XIX, No. 113, Sept. at 1932, "La Antropología Penitenciaria," p. 599.

¹⁰ Dealing with penal subjects is technical, delicate and complicated work. A person engaged in this work must be earnest and properly trained. He must not be disturbed by noises of the street, excesses of the press, or visits intending to corrupt him, or by correspondence aiming at the continuation of crime, and still less by flattering suggestions of a political nature. Source as in the previous footnote.

¹¹ Dr. Telma Reca, Argentinian writer, states as follows: "Officials called upon to direct prisons and to work in them have been so far too frequently appointed everywhere in a casual and arbitrary manner and under influences entirely unrelated to their functions. Reasons of a public or personal nature or simply regard to established customs are considered in these appointments ahead of reasons of justice and public welfare and ahead of scientific conclusions as to the methods of treating lawbreakers. It can be stated with great certainty that the only possible guarantee of success in the treatment of all law-breakers capable of being reformed is found in the intelligent collaboration of suitable officials well trained in their respective fields; and such treatment should be based on the complete knowledge of each case." *Revista de Derecho. Facultad de Ciencias Jurídicas y Sociales de la Universidad de Concepcion*. Vol. III, No. 12. *La Individualización de la Pena y el Mejor Desideratum*.

The Greek writer Glycofridis states as follows: "Improvement in the personnel can be brought about by appointing persons with the degree of Doctor of Law; supervisory personnel should be selected among persons of recognized ability for active service; practical training of all officials is also necessary in order to avoid impracticable acts."

At the Congress in Prague (1930) the following resolution was adopted: "Central administration of prisons should be entrusted to persons most capable of fulfilling the functions and selected among criminologists who devote themselves to penal science and among directors of penal institutions."

ability is the basic requirement of every official in prison administration because this technical ability cannot be obtained without special training which will give the official the judgment necessary for the correct application of the scientific methods of present-day criminology and create an opportunity for a progressive application of these principles.

As regards the particular functions of the inspector of prisons, about which Berenguer says that "no administration is more urgently in need of supervision than the difficult administration of prisons," it seems to us worthwhile to repeat the opinion of Alfonso Diaz de Ceballos: "The function of supervising and criticizing the work and of seeing that it is done is not less important than that of administering and improving it; these functions supplement each other because the starting point for both is observation of conditions in prisons, and their purpose is to bring about an improvement in all services by combining the humanitarian concept of our times and the greatest effectiveness of the work entrusted to the prison administration; namely, that of correcting and rehabilitating the lawbreaker. Inspection stimulates and aids the official because he sees himself watched and at the same time feels that he is aided by his superiors. This service is necessary because of the large number, complexity, and importance of prisons."¹²

The international congresses have not failed to recognize the need of inspection. For this purpose let us quote from the proceedings of the Congress held in Frankfurt in 1842:

"The revision of penal laws, the organization, under a law, of an inspection of prisons and of supervisory commissions, and the establishment of a society for the welfare of released prisoners must be considered as a necessary supplement to the reform of prisons." At the Congress held in London in 1872 it was stated that: "It is not only useful but also necessary that there should be in a State a central authority directing and supervising the prisons without any exception and also the institutions for juvenile delinquents."

The congress held in Washington in 1910 recommended that "all the institutions of a penal nature, including detention homes and local jails, should be under the supervision of central authority."

The functions of supervision and the inspection of prisons, recommended by the three above-mentioned congresses, imply the existence of a supervisory agency which is to report to the central authority about the internal life of the prisons and the technical matters of their administration. Having brought our discussion to this point, we shall now consider what orientation should be given to such an agency.

There are two kinds of activities in the administration of prisons: the first deals with the equipment, such as the buildings, sanitation, and supplies; the other, of a technical nature, is concerned with the actual work of incarceration, the separation of the prisoners and its results, the discipline, work, and education.

As regards the buildings special attention should be given to the prevention of escapes. When new buildings are constructed, the inspector should take part in the preparation of plans

¹² *Legislacion de Prisiones*. Madrid, 1929, p. 31.

and in the construction of the buildings.¹³

Health and hygiene in prisons also deserve the special attention of the inspection department because of the importance for the prisoner of the habit of cleanliness and personal hygiene.¹⁴ The division of supplies is closely connected with that of health; it is appropriate to mention that bad food and abuses on the part of persons who are in charge of the food supplies are a frequent cause of protest and even disturbances harmful to the discipline and provoking unwholesome discontent among the prisoners, which should be always avoided.

As regards the functions of a technical nature, the inspector must see that the methods of imprisonment prescribed by the law or the National Bureau of Prisons are carried out in an exact and intelligent manner. The advanced conceptions of the individualization of the penalty are based on special care in the application of the methods. Nothing is more correct than the well-known saying by Ferri: "There is no crime, but only delinquents;" and this shows the difficulty of this phase of prison administration. A prison director must have special qualifications which can be obtained only after study and long experience. The control of these services is the

most difficult part of the inspector's task because besides the application of all his knowledge he must also use his capacity for observation and analysis.

The supervision over the discipline requires much tact for the avoidance of internal dissensions in the penal establishments. For this reason it is advisable that an inspector should never settle complaints or disputes immediately, but only after careful investigation followed by a report from the central authorities so that the latter may make the decision.

The methods of the prisoners' work and their education are more easy to supervise. For this purpose it is sufficient to examine in detail the work and industries in the institution. It is also necessary to be present at the educational work for the prisoners so as to be able to give information on this subject in the report to the National Bureau or the Council, as the case may be. Just as in the question of the organization of the central authority in the inspection of prisons it is also necessary to consider the advantages of direction by a board versus direction by one person. Section 136 of the Code of Peru provides that the General Inspection of Prisons is to have charge of the technical direction and inspection of all the institutions: the office of the inspection is to consist of an Inspector

¹³ The first Latin-American Congress of Criminology after having considered the report on prison architecture by Francisco L. Romay and Arnaldo H. Giorgi, made the following declaration:

1. The buildings for the housing of prisoners should be planned, considered, and constructed by technicians specializing in prison architecture.

2. Advisory or executive boards or committees of penal institutions must consist of technicians who specialize in prison architecture.

3. The schools of architecture must include theoretical and practical courses for the training of technicians in prison architecture.

¹⁴ In France there is a Committee of Prison Hygiene consisting of 15 members selected among officials of the Prison Administration, physicians, pharmacists, and architects. This Committee advises the Minister of Justice on the questions relating to prison hygiene, such as sites and cities to be chosen for the construction of prisons.

General of Prisons who will have charge of all the penal institutions and those for simple detention, a secretary (both of these persons should be lawyers), a physician who specializes in forensic medicine and psychiatry, technical inspectors and the necessary administrative staff.

In Belgium this work was entrusted to the governors and mayors of cities by the Code of Criminal Investigation of 1810, but later an Inspector General was appointed in accordance with a decree of 1930; and Ductpetiaux, the famous Belgian criminologist was the first incumbent of this office.

In Spain, the inspection of prisons is national and provincial.¹⁵

The purpose of inspection is as follows: "Permanent supervision of the functioning of the prisons as regards the disciplinary treatment of prisoners, the quality of the technical and administrative services, the conditions of habitability and safety of the buildings, and the enforcement of the laws, regulations, and rules." The Office of Prison Inspection is under the Ministry of Justice and Worship and it includes also a Supreme Board of Inspection under the chairmanship of the General Inspector of Prisons; one of the Board's members is appointed as secretary. As regards buildings the senior architect of the National Office of Prisons is also supposed to be on the Board. The Director General may be the chairman of the Board if he so wishes. He has jurisdiction

of the following matters: 1. Issuing of instructions to the provincial inspectors on the interpretation of rules and regulations and their application to the work; answering questions from the inspectors; and prescribing uniform standards; 2. Issuing of official papers in cases of disciplinary action against prison officials accused of very serious offenses that may lead to discharge, and papers prepared as a result of inspection visits and on other matters that may be decided by the Director General; also papers dealing with rewards to prison staffs and with the cancellation of unfavorable statements about them; 3. Action on appeals against decisions by the prison authorities in disciplinary cases, either confirming the decisions or returning them to the lower authorities for making a new decision, and subjects of any nature on which the office of the Director General is asked to aid.¹⁶

In France, there has been in existence a General Inspection of Administrative Services established in 1901 as one body, whereas previously there had been prison inspectors separate from those employed by the health and welfare services. The Inspection General is directed by the Ministry of Justice in matters dealing with inspection of penal institutions; its officials make annual and special visits and perform advisory functions.¹⁷

We prefer the unipersonal system. It is dangerous to organize boards on

¹⁵ We refer, of course, to the legislation which was in force before the Revolution. See the interesting work by Dr. Alfonso Diaz de Ceballos, Chief of the National Office of Prisons, entitled "Prison Legislation," published in Madrid in 1929.

¹⁶ Alfonso Diaz de Ceballos, *op. cit.*, p. 33.

¹⁷ Dr. Armand Mossé, "Prisons and Institutions of Correctional Education," Paris, 1929, p. 109. The author is Inspector General of the Administrative Services of the Ministry of the Interior and has charge of the lectures at the Institute of Criminology of the Department of Law of the University of Paris.

technical matters for giving orders to specialists. It has been well said by Professor Joseph Berthelemy: "It is not necessary to appoint amateur criminologists for watching the work of professionals."

The system of collaboration, advice, and control is good for adoption at the time when a basis is being set up for a central administration of prisons; but in executing the details of the prison program, technicians should have a free hand.

It is known that in some countries and for some kinds of work, boards have given good results, and since they may be successful in some cases at least, they should not be rejected absolutely. In Belgium, for example, the Supreme Council on Prisons, created in 1921, has been almost nonexistent and has had no meeting in 7 years. We already know what has happened in Uruguay. On the other hand, in France and in Cuba the boards or commissions are fulfilling a very important function and are contributing to the maintenance of the spirit of transition in the work of the National Bureau of Prisons, the staff of which is exposed to periodical replacement in accordance with the hazards of politics. Therefore, as regards central administration, we would approve an advisory council as in Argentina, presided over by the Director General of Prisons so as not to destroy administrative unity. Dr. Ernest Bertrand was quite correct when he said that "it is not always advisable to imitate the system of another country."

III. *Suitability of a Military Organization for Prisons.*

As a secondary question, but one

closely connected with inspection and supervision of prisons, I shall proceed to examine whether it is advisable to introduce the military regime in prisons or whether it is preferable to leave them their purely civil nature.

This problem is important from the point of view of our study because of the difficulties that may present themselves at the time of inspection in a purely military regime.

At first glance, it would seem that it would be advantageous for the administration of prisons if their employees and services were under a military authority. However, all the writers whom we have consulted on this subject are of the opposite opinion. This unanimity shows that the writers against militarization are very valid and that it has been rejected by experience.

The only argument in favor of a military regime is that it would promote discipline and maintain habits of order and obedience among the staff. Discipline should not be placed above other purposes. It is only a means and it is not created by military uniform. Discipline is obtained when there are rules for it and when there is an aim to achieve it. In a civil system the same discipline may be maintained and the same order may be established as in a military system. Therefore, the argument in favor of a prison administration under the Ministry of War or the Department of Public Safety is unsatisfactory.

Juan P. Ramos, Professor of Penal Law and President of the Center of Penal Studies of the University of Buenos Aires, states in one of his numerous works as follows:

"In Europe in general, the problem of prison staffs is entirely neglected; these positions are given only to retired individuals. In France, for example, these positions are given to retired Army officers. It can be said that almost all French prisons are in charge of persons who had been in the Army. This circumstance, which may be good from the point of view of strict discipline, has its serious disadvantages as regards the moral reform of the prisoners. These persons are accustomed to giving orders and to a discipline which regards merely the outside aspects, disregards the inner morale which is important in such cases. Thus it happens that the prisoner who shows the best discipline and obedience receives the greatest consideration from the warden without being the best trained. This takes place, as it has been stated many times, in cases of recidivists who are the best in obeying the rules."¹⁸

A similar opinion has been expressed by the prominent Colombian Penologist, Dr. Francisco Bruno, Director of the Central Penitentiary of Bogota and Editor of the *Revista Colombiana de Biología Criminal* who states as follows:

"We have read carefully the reports by the former Director of Justice and the directors of prisons presented to the Ministry of the Interior since the establishment in that Ministry of the Bureau of Justice and that of prisons. In these reports we find statements as to the qualifications that must be met by directors of jails and prisons: these statements deserve special comment because some of them differ completely from the scientific ideas on social protection. The former Director of Justice, Dr. Martin Perez, considers retired Army officers of a certain age and accustomed to governing well their families as the most suitable candidates for the positions of directors of jails. This statement would deserve no consideration if it were made by another person of lesser prestige in high social circles, but since it was made by Dr. Martin Perez (in his Memorandum to Minister Turbay, published in

the report of the Ministry of the Interior for 1934) it deserves a comment. The biologic orientation of social protection is a new idea, at least among us, and it has received little or no attention from our statesmen; this is the only justification for the statement made by the former Director of Justice and the present Minister of Industries. *A director of a jail cannot and should never be a military person.* Such a high post requires special preparation in law, particularly in penal law, penitentiary law, and criminal sciences (biology, psychology, anthropology, physiology, pedagogy, forensic medicine, finger printing and endocrinology), that is, special education is necessary, and physicians or lawyers with scientific training would be the best directors for penal institutions. Therefore, the rules for the establishment of a school for training of employees in jails and prisons, mentioned in the decree number 1405, are correct and scientific. Unfortunately, the authorization given to the Ministers of Interior and Education to establish such a school has not been carried out. The rules remained on paper. There has been a need for a Ministry of Justice which could not be substituted by any other Ministry or any other government unit and which would devote itself exclusively to the study of the serious problem of social protection of which the prison reform is only one phase. By all means, a prison director capable of proposing and solving a scientific reform must be a specialist in criminal and related sciences. Any other concept is either an error or shows a lack of knowledge of the biologic orientation of all work for the prevention of crime."

Dr. Lemos Britto, member of the Council of Prisons of the Federal District of Brazil, stated as follows: "Positions of director of prisons should be given to specialists, lawyers, or physicians, who have devoted themselves to the study of criminology and who have shown an organizing spirit."

Mariano Ruiz Funes, another prominent Spanish penologist, in speaking of

¹⁸ Course of Penal Law, Vol. III, p. 98.

a good administration of prisons refers to it as "effective action which finds the roots of its effectiveness in the *vocation of the personnel of the penitentiary*, a problem both of *professional ability* and of enthusiasm, and in the adequate elements of physical and moral hygiene."¹⁹

In France, as stated by Professor Ramos in a previous citation, the staff of penal establishments is selected among former military men. However, as regards the nature itself of the institutions, Armand Mossé states that the prison reform of September 1926 had the following consequences: the almost complete disappearance of military prisons and the combining of the Bureau of Prisons with the Bureau of Criminal Matters of the Department of Justice.

In Belgium the new law on the en-

rollment of public employees reserves these positions for Army volunteers.

It is necessary to explain here that we do not disapprove the selection of persons who served in the Army for the positions of guards and inside inspectors; but we are opposed to the appointment of persons unfamiliar with criminology to positions in technical institutions or as wardens of prisons.²⁰

On this point I agree entirely with the conclusion reached by the Congress held in St. Petersburg in 1890 and Prague in 1930. Lack of ability and skill in the higher officials of prison administration may bring grave consequences. Professor Aschaffenburg stated correctly that, "with the best judge and the best jurisprudence if the executive official lacks ability the law can be thrown into the waste-basket and the jurisprudence may be burned

¹⁹ There are many quotations on this subject. Saldaña, in speaking of the Penitentiary Congress of Prague which was held in 1930 and at which a resolution—quoted by us previously—was passed, states as follows: "There remained the problem of central administration or general direction of penal establishments performed at the top by politicians, while the work is entrusted to cold bureaucrats. The Congress approved by acclamation the following vote by Neymark, Editor of the Penitentiary Review of Poland: 'It is also necessary to make sure that persons most capable of fulfilling their respective functions participate in the Central Administration of Prisons, persons selected among criminologists devoting themselves to penitentiary science and among directors of penal institutions.' Obviously, the world understands this delicate mission: the application of treatment, the success or failure of which may bring about a decrease or increase in delinquency. Scientific training, professional education, and an appropriate salary may achieve this aim of protecting society by raising the positions of prison officials to the level of prison magistracies."

Professor Ramos, quoted by us, writes as follows about the Ministry which should be charged with the central administration of prisons: "Those who are in favor of this solution argue that the Ministry of the Interior is mainly a political office. In the discussions of the budget the Minister of the Interior is little

interested in calculating the expenses and resources for the prisons; so that the food, health, and workshops in the prisons are adversely affected. Those of the opposite opinion argue that the function of the Ministry of Justice is to apply the penalties and that this continuity of jurisdiction may produce a monopoly which is in conflict with the division of authority. However, there is no doubt that control by the Ministry of Justice is more effective as regards the application of penalties because the judge may know in this way how the penalties are applied. At the same time, there are avoided the inconveniences of dual authority, judicial and administrative, with the right to intervene in the regime to which the convicts must be subjected."

²⁰ "It is entirely possible to meet men of a military career who are able to acquire rapidly a humane and not merely formal understanding of the function of guard. Former non-commissioned officers become, generally, upon entering their duties, excellent guards in the former sense of this word. Accustomed to obeying, or giving orders, appreciating the value of rank, and having the habit of good appearance and of clearness of expression, they become perfect employees, and at the same time are very energetic and very adaptable. Plain civilians rarely have these qualifications in the beginning; it is often necessary to make them overcome their indifference." Ernest Bertraud, "Lectures on Prisons," p. 408.

up." Thus a mere knowledge of theories is insufficient; practical experience is necessary. To appoint to these positions ideologists without solid experience is to expose them to complete failure; nor is it advisable to appoint a person without training acting merely on the basis of long services. Science and experience, inseparable combination, are the proper qualifications of the useful and suitable prison official just as they are those of the physician, chemist, and a number of other servants of humanity who help with their knowledge and their art in this struggle against great social scourges.

IV. *Participation of the Judiciary Officials in the Inspection of Prisons and in General in Prison Administration.*

Some countries have tried to introduce, instead of prison inspection, periodic visits by judiciary officials. In Costa Rica, for example, there is a system approved by the Organic Law of Judicial Authority; but these visits take place irregularly and are not subject to any control. We are not in favor of such a method because it seems to us that it can produce confusion of authority or rather interference by the Judicial authority in functions properly belonging to the executive authority, one of which is the execution of sentences. The Judicial authority was established for trying court cases and pronouncing sentences, but it lacks the necessary means for the administrative execution of sentences. Consequently, its work outside of its sphere of action must be of necessity ineffective or only slightly effective; in addition the judiciary official lacks the authority nec-

essary to make his decision prevail over that of officials of the Executive Government who have greater independence and power.

However, there may be an inspection by judiciary officials of a higher grade in cases of complaints within their jurisdiction. These officials after having been sent to the institution concerned may report the case to the Inspection of Prisons for its action.

As regards France, we can quote A. Mossé as follows:

"Would such a state of things be desirable? We doubt very much whether this would be the case, particularly in a radical form. It seems to us there is a sharp distinction between everything which is related to the investigation and judging of a case up to the sentencing of the guilty person, if this takes place, and the conditions under which the sentence is carried out.

"It is only a matter of organizing and administrating institutions to which the convicts are committed, making provision for their food, sleep, clothing, organizing their work, putting them under a certain discipline and of re-educating them from the moral and social point of view.

"All this has only a distant relation to the functions assigned to the judiciary authorities; and if these authorities, particularly through their power to make visits, should have access to the detention institutions, even if they should be called upon to exercise over a part of the prison population—those arrested and those indicted—as a sequence to the investigation of their respective cases a control over certain matters of discipline (prohibition of communication, regulation of visits), it would not seem that these authorities were qualified to intervene in the conditions of the application of the penitentiary regime proper, nor with stronger reason, in the functioning of the detention institutions, whether in the administrative or economic aspects.

"Notwithstanding, we do not think that magistrates of the judiciary should

be separated from our penal organizations in matters concerning prisoners.

"It seems to us that, if the administration of penal institutions, their economic and industrial functioning, and supervision over the prisoners should be under the jurisdiction of the National Government, there could be many advantages in closer participation than is now the case, of the judiciary authorities in the disciplinary or educational work. This is done to a great extent in dealing with juvenile delinquents, the greater number of whom are placed in charge of welfare agencies under the direct supervision of the courts, although in such cases the cooperation of teachers who are better qualified than the judges would be more suitable.

"In the case of adults the intervention of magistrates takes place mainly through their individual action as members of supervising committees and through the opinions they are asked to give on petitions for parole. This field of action could be broadened. The supervising committees could be given their own powers and the conduct of prisoners during their detention could be followed at close range by the magistrates through individual visits or court sessions. Finally, their place seems to be indicated in laboratories of criminal anthropology intended for the scientific classification of prisoners. Briefly, the magistrates could be asked to cooperate effectively in checking crime or in the field of correctional education of delinquents and criminals and to do work which would affect the situation of the prison population rather than that of the administrative or economic machinery in which they had been called upon to participate."²¹

According to a Belgian writer:

"A movement has been developing, particularly in France, in favor of participation of the magistrates in the administering of penalties. According to this idea, they are more able to individualize the penalty and to give it its real nature. The actual carrying out of the penalty would then be left to the Government, and the judges would take

charge of the rest. The new draft of the Italian Code provides for an inspecting judge (*Juez de Vigilancia*) who watches the carrying out of the penalties (Section 140). He is given some of the functions of the former committees on one hand, and those of general inspection on the other hand. He investigates whether the laws and regulations are observed, makes reports on the changes in the classification of the prisoners and on their complaints, expresses his opinion on cases of pardon and parole, etc.

"This innovation which would restore briefly the former state of things is being discussed, while this is written, by the General Society of Prisons of Paris. Some persons wish to justify it by the complexity of the new penal law. I think that this innovation could not be carried out except in countries in which the administration of prisons is insufficiently organized or badly directed and does not rise to the height of its purpose; in other places it would not only create conflicts, not to say a permanent confusion, but as a result of it, the institutions would degenerate. We appreciate greatly the wisdom and knowledge of the magistrates whose advice we had been always glad to receive, but it is above all, as I have stated previously, in the interest of their function and not in that of ours²² that they would have to visit the prisons. The judge's mentality, mainly philosophic and critical, comes up in no way to the requirements of a disciplined and constructive life. . . . The majority of the judges could not become accustomed to this life, nor to give to this environment the time necessary to exert an influence or even become thoroughly acquainted with it; and their presence would be inevitably a fifth wheel. . . .

"Moreover, even the optional and voluntary cooperation of the judges in the work of the prisons stumbles upon the particular structure of the present-day judiciary organization which is placed outside and above the inmates. It can even be doubted whether public opinion would be pleased to see them somewhat solicitous about the malefactors whom

²¹ Armand Mossé, *op. cit.*, pp. 37-38.

²² We must remember that the author is the Director of the Central Prison of Louvain.

they themselves have sentenced. As regards the members of the district attorney's office, their professional combativeness and the fact that they have directed the prosecution, sometimes with bitterness, disqualifies them totally for directing the execution of the penalty and for the management of a penal institution. . . .

"It is a mistake to allow the members of the courts too much authority in administrative functions. They show in this field no more wisdom than an administrative official would show in the field of the judiciary; nor do they always show the clearness of vision and the equilibrium which they could be assumed to have. Many important matters seem trifles to them. It is necessary to have performed this complex work and to have acquired the necessary mentality in order to know thoroughly the extent of their duties and not to talk nonsense."²³

In Chile, as stated by Professor Eduardo Torres Armstrong, in his study on "The Prison Reform:"²⁴

"I don't deal with this subject in my study, because I consider that the judge lacks competence in the execution of penalties. His functions end at the time he pronounces the sentence; because the treatment of delinquents, in order to obtain their regeneration, should be entrusted to educational action aided by psychiatry."

However, it can be stated that these ideas have been developing because the resolutions passed at the Congress held in Berlin on August 13, 1935, approved participation by the magistrates in joint committees, the purpose of which is to decide the manner of carrying out the penalties and the measures of safety.²⁵

The Cuban criminologists, Dr. Armando M. Raggi and Israel Castellanos, authors of the Law on the Execution of Penalties and on Measures of Custody, agree with this idea and suggest the composition of the Council of Social Protection (*Consejo de Defensa Social*) in the following terms:

"With such favorable antecedents we have not hesitated to place control over the penal system proposed by us in the hands of a body of a strictly technical nature and authorized to direct, administer, and govern all the institutions for the checking of crime, with scientific orientation and technique; this body is to consist of persons selected in such a way that their presence carries an indisputable guarantee of effective application of the legislation against crime. We have named this body Superior Council of Social Protection so that its title includes all the aspects of this protection, both in the field of prevention and in that of repression. This Council consists of the Professors of Penal Law, Legal Anthropology, Legal Medicine, Psychiatry, and Paidology of the University of Havana; an official of the office of the Attorney General; an official of the Judiciary Department; the Director of the Central Laboratory of Prison Anthropology; and the Inspector General of Prisons."

The law drafted by Dr. Moises Vieites provides for a board consisting of a government attorney, judge, alienist, and a police official. This body is given the authority to watch the delinquents who are on probation and those who have been freed but are subject to

²³ E. Bertraud, *op. cit.*, pp. 331-333.

²⁴ Santiago de Chile, 1935, p. II.

²⁵ The edition of the Code of Social Protection (*Código de Defensa Social*), to which we referred in a previous footnote, contains on p. 366 a resolution which is quoted here because it is considered of great interest. The question debated was: "What should be the competence of the penal judge in the execution of the pen-

alty?" The Congress passed unanimously the following resolution:

"In view of the government's more rational attitude towards crime, it is appropriate to intrust without reservations, the important decisions indicated in the law and concerned with the execution of penalties dealing with the privation of freedom, either to judges or to government attorneys or to joint committees under the chairmanship of a magistrate."

"measures of prevention or social protection."

The manner in which both Cuban plans solve the problem seems to us the best because it allows the judiciary authorities a moderate amount of participation and limits the activities of the magistrate representing the judiciary authorities to action that may be taken by him within the body to which he belongs.

This substantiates our judgment that it is desirable for the judiciary authorities to be represented in the controlling and advisory organ of the Central Administration of Prisons; but in view of the special nature of the functions fulfilled by the justice officials and for the purpose of avoiding conflicts of authority, it is better to limit their powers in the previously stated manner.

In conclusion we can summarize our points as follows:

I. The most practical form for reorganizing a prison system which would also conciliate the different tendencies is along the lines of a General National Office of Penal Institutions (*Dirección General de Institutos Penales*) of an unipersonal nature and receiving advice from a Superior Council of Social Protection which would have controlling, supervisory, and advisory functions.

II. A General Inspection of Prisons should be in charge of an Inspector General who would have the necessary technical personnel for watching the institutions and for special supervision of the management of prisons.

III. The higher officials and espe-

cially the directors of institutions and the Inspector General must combine scientific knowledge with experience.

IV. The military organization is not to be recommended for penal institutions, although the guards or the subordinate employees of the administration and of the institutions could be enrolled from among retired military men and do not require extensive technical education.

V. The participation of the magistrates should always be discreet and limited to the Superior Council of Social Protection. The judges should not assume charge of the work concerned with penal institutions. That should be reserved for experts.

It is advisable to state that if technical knowledge and long experience are necessary for the administration of ordinary prisons, these qualities are still more needed for work in institutions for minors, because the fundamental principles of the penal law for minors differ, as regards the placing of minors in institutions from those of the law for adults; for example, it is required that institutions or reformatories for minors must be mainly protective and not penalizing; so that it is easy to understand that the present article refers only to the administration and inspection of institutions for the detention of adults. For the approach to problems relating to reformatories for minors it is necessary to adopt different viewpoints; it does not mean, however, that a large part of what has been said here could not be applied to the penal law for minors.