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## Limits of Penal Treatment, The

Hans von Hentig

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# THE LIMITS OF PENAL TREATMENT<sup>1</sup>

Hans von Hentig<sup>2</sup>

Twice during the last two hundred years penal practice has stood at the parting of the ways. After having overstepped all bounds of humanity, economy and efficacy the death penalty was restricted to a narrow confine. About a century later we are in the depth of a new crisis. Imprisonment, once hailed as the great revolutionary reform is being doubted, contested and seems a long way from being the solution of our penal hardships. The protective function of confinement has gone, and all the fulminating sentences can not mystify us, dispensing 2 to 15 years, 9 to 40 years and so forth. In fact it is mostly the minimum sentence which counts, and even this minimum is cut down by rules of good time and extra good time. The actual time served in 1937 by those charged with murder was 78 months,<sup>3</sup> with robbery 42 months, with rape 27 months.<sup>4</sup> And still we speak of the prevailing custodial-punitive character of our prisons.

Another development is the extended length of life. If on an average all men live longer,<sup>5</sup> convicts live longer too. They have more time to apply their perfected technique and

their vaster experience with the police, courts and prison officials to the world of suckers and prospects.

## II

We speak of the custodial-punitive character of our prisons. It is generally assumed that confinement protects society, at least during the years of detention. And it is further argued that the prisoner who is acutally incapacitated for committing crimes might lose somewhat the strength of his anti-social urges by non-usage. We would be wrong in believing in the downright protective function of the prison. Just look at the record of offenses for which prisoners are reported and punished in a given institution.

Stealing is a common feature, state property is defaced. Degeneracy goes on day and night, sodomy is current, indecent exposure rampant. Liquor is made, prisoners are found intoxicated, narcotics are demanded and supplied. Fighting and gambling go on. Inmates are stabbed and killed, and some time ago a Rocky Mountain penitentiary saw two inmates killed by a home-made bomb.

<sup>1</sup> Baconian Lecture, University of Iowa.

<sup>2</sup> University of Iowa.

<sup>3</sup> This is a selected set of murderers, since the grave murder cases are dealt with by execution.

<sup>4</sup> Prisoners in State and Federal Prisons and Reformatories, 1937; Washington, 1939, p. 53.

<sup>5</sup> The extended length of life is most distinct at birth, but still perceptible in later years. In Massachusetts these were the average years of life remaining to males at the . . . age of

	0	20	40
1789 .....	34,5	34,2	25,2
1909-11 .....	49,3	42,5	27,0
1929 .....	58,1	45,5	28,6

W. S. Thompson and P. K. Welpton, *Population Trends in the United States*, New York, 1933, p. 240.

This crime wave is not confined within the walls. Prisons have trusties. Thus we find cases where prisoners are punished for burglarizing civilian homes or for stealing from civilians.<sup>6</sup> In a Rocky Mountain Penitentiary at least three instances were reported where counterfeit money was made.<sup>7</sup> Ten dollar bills were printed in the photo-engraving department of a great Western penitentiary.<sup>8</sup> Counterfeit bonds were turned out some time ago in a famous Eastern prison.<sup>9</sup>

This is the custodial task of prison. Society is safe-guarded for a couple of years, although crime goes on within the prison walls. How about the punitive calling of confinement?

Bates<sup>10</sup> mentions the complaint of a board of welfare in a Southern State. "Prisoners who served in the Federal penitentiary at Atlanta, Georgia," they wrote him, "report . . . invariably upon their return good treatment and better food than they ever had in their lives. They dilate upon the baseball games, moving pictures, and other entertainments." And the board asks in concluding that the Federal Penitentiary should be made less attractive to a class of men who regard it as a vacation from family responsibilities.

If there is rivalry between two evils and their degree of deterrence and if the so-called common life wins over punishment in rigor and harshness, the

question is proper: What sort of existence are these people living, what kind of meals are they eating, what sort of married life are they leading if prison food<sup>11</sup> is a delicacy and the horror of the prison cell a relaxation from domestic happiness? Conditions such as these are bound to off-set all punitive mechanisms at our command, since they are based on a normal standard of life and not a sub-normal existence.

We need not look very far for evidence that prison is a punitive measure and is keenly felt as such. Though prisons according to a widespread opinion, are places of coddling, there are thousands of escapes yearly from these abodes of pampering. There are riots at regular intervals. These prisoners do not risk their neck in order to get away from a well-liked institution. Prisoners do not commit suicide after their parole petition has been declined, because prison is such an attractive place and because they are afraid or unwilling to assume their family responsibilities. Whenever prison riots are investigated the punitive sides of modern prison life come into view. They are mostly concealed otherwise, but they are officially conceded and accented, if there is need of finding reasons and excuses for the annoying occurrence. It is then and not before then that we are told of bad food, real or imaginary injustice, unbearable

<sup>6</sup> 27th Biennial Report of the Colorado Board of Corrections and Warden of the State Penitentiary, p. 44 and 29th Report, p. 47.

<sup>7</sup> 29th Report, p. 47 and 30th Report, p. 39.

<sup>8</sup> R. C. Cooper, *Here's to Crime*, Boston, 1937, p. 394. It would not rely on Cooper's book, if it did not show close relations to the Federal Bureau of Investigation.

<sup>9</sup> *Id.* p. 344.

<sup>10</sup> Sanford Bates, *Prisons and Beyond*, New York, 1936, p. 68.

<sup>11</sup> Food, for the most part, is substantial in American Prisons, but for want of vitamins, minerals and variety there is certainly often "chemical starvation."

overcrowding, inadequate prison officials and grossly unfair and partial treatment of the prisoners.

If we add the unsolved and unsolvable sex-problem, we see that the most modern prison still entails many punitive privations of normal physical and mental outlets. These sufferings, in fact, amount to a torment which no society for the prevention of cruelty to animals would suffer one day.

### III

From a practical point of view this is the fundamental distinction between deterrence and reformation: Effective deterrence rests upon the unbroken operation of deterrent instrumentalities. As soon as they cease or make default, deterrence ceases. Determent is thus a limited method of controlling human behavior and checking human urges, and it is expensive and unsafe, as well, since many beings are chronically or temporarily fearless.<sup>12</sup>

Reformation demands more effort, skill, experience, and expense in the initial stages of treatment. If successfully carried through, reformation turns out to be a saving device and a most effective way of dealing with the law-breaker.

We can thus say, that the limits of penal treatment coincide with the limits of reformatory treatment. Since the protective function of prison is ephem-

eral; since deterrence rests upon dubious assumptions, like detection, conviction, readiness to be frightened, reform is the only rational end of penal treatment. Do we attain our object?

Prison, we allege, is the most perfect organization of personal and social disorganization the human mind has ever conceived.

This assertion will not appear overdrawn, if we ask some of these disintegrating forces to march past.

I need not recall the many studies on employment and crime, how unemployment undermines the worker's physique and morale and how it wrecks his self-respect, technical skill and will power. Now, unemployment is raging in the great majority of our prisons. The assignment sheets do not tell the story; there is a big difference between job and work; some of these jobs mean that work is involved, many mean idleness.<sup>13</sup> Gill<sup>14</sup> has estimated that of 106,818 convicts in state prisons 55,622 were idle in 1935-36. More than half the inmates were idle in 47 penal institutions. If idleness is the root of all evil, this disintegrating force is solidly entrenched in our penal institutions. The hard labor of olden times has given way to hard idleness, punitive more to society than the convict himself.

<sup>12</sup> See my paper: "Limits of Deterrence" read at the meeting of the Association of American Law Schools, Chicago, Christmas, 1937. *Journal of Criminal Law and Criminology*, XIX, 1938, pp. 557 seq.

<sup>13</sup> "Twenty-eight men are employed in the laundry while the work, according to the super-

visor, could easily be done by ten. They work about three or four hours a day. There is no work in the afternoon." Report of the Governor's Special Committee to Investigate the State Penitentiary, Denver, 1929, p. 40.

<sup>14</sup> Attorney General's Survey of Release Procedures, Washington, 1939, vol. V, p. 53.

There are many forms of busy idleness in addition to open unemployment.<sup>15</sup> Maintenance work calls for a certain license, for mobility and closer contact with privilege-dispensing officers. It is wanted therefore, although it is mostly a low type of work, done out-side by maids and half-grown children. The labor, furthermore, in hill gangs and quarries lowers the competitive capacity of the convict who once has been a skilled laborer.<sup>16</sup> It has no sense that our prisons train waiters, laundry men, quarry men and road-makers at best. All these are occupations our machine age tends to do away with. During the last years road construction has even slipped away from the convict since with the wider use of road machinery they have become unsuited for road-maintenance.<sup>17</sup> What we do is to train those already marked for chronic unemployment, for renewed delinquency.

We know the criminogenic effects of bad housing. Lack of privacy, "so essential to an integrated personality is a particularly irritating phase of life in compact quarters."<sup>18</sup> Thirty-two penal institutions out of a total of 85 (about 38 per cent) indicated a serious problem of overcrowding.<sup>19</sup> 13,974 convicts were reported to live with another prisoner in one cell,<sup>20</sup> the state co-operating in forming male pairs and promoting the ensuing jealousy. The

over-crowded prison is closely related to the problems of the mammoth-prison. Penitentiaries like San Quentin, Jefferson City and Jackson, Michigan present a psychological difficulty which has been neglected until now. Many first offenders, in entering the penitentiary, have a period of shame and remorse,<sup>21</sup> as soon as the first stunning shock of arrest, conviction and admission is over. If this period is not exploited for a careful and cautious approach, the man settles down in sensitive deadness and moral dullness. He has become an inner pachyderm, or better said an emotional thick skin.

Outside the prisoner saw himself in a hopeless isolation and minority. It is that crushing disapprobation which renders the fate of the sex-offender so hard in prison and in which all other prisoners are harsh participants. When the man has entered the institution and has stayed there a few weeks, he is struck with amazement in seeing that he is no longer an isolated monster, but the member of a great feared and therefore apparently powerful group. Then the stories start pouring in on him, how few crimes are detected, how cases are fixed, how ineffective after all the dreaded machinery of justice is. The crime of which the prisoner was sincerely ashamed, begins to appear trivial to him.

The change goes on even in the medium sized prison. If there are 4,000,

<sup>15</sup> Victor F. Nelson (*Prison Days and Nights*, Boston, 1933, p. 12) calls the useless prison work an "absolute industrial masturbation."

<sup>16</sup> "Where can you find a job making automobile plates in the free world when they are all made in prison?" Nelson *loc. cit.* p. 12.

<sup>17</sup> Gill, *loc. cit.* p. 46.

<sup>18</sup> Mabel A. Elliott and Francis E. Merrill, *Social Disorganization*, New York, 1941, p. 622.

<sup>19</sup> Gill, *loc. cit.* p. 55.

<sup>20</sup> *Id.*

<sup>21</sup> This development is vividly depicted by a convict in "*An open letter to society by Convict 1776*," New York, 1911, p. 59.

5,000 or 6,000 convicts a tremendous auto-suggestion is laid on him. He becomes aware of a complete society rising up in arms against another society believed up till now to be the only genuine civil community. Crime steps up to the novice with the authority of social compulsives, folkways are even mores. The magnitude of the "other side" is grasped and this numerical quantity seems to mean power, protection, justification.

The mammoth prison is haunted by the sage of crime. It breeds the professional criminal. It is the introduction to the organized underworld<sup>22</sup> which receives here its material substructure and its ideological foundation.<sup>23</sup>

Idleness and overcrowding are but two sides of a dark picture. Even the best administered prison is the counterpart of a deeply disorganized society.<sup>24</sup> The stratification in over-privileged and under-privileged is more strongly marked than in a revolution-ripe ancient regime.<sup>25</sup>

In our daily life we try to maintain the claim that the able and honest progress. Prison life, however, means

the survival of the most wicked; of the unfit. We may believe or not that crime pays outside. Here in prison deceit pays. We affirm that the honest and manly man is the best man. But who is the best prisoner? In the beginning of prison history the best prisoner was the man who could memorize the largest part of the Bible.<sup>26</sup> In all times shrewed hypocrites,<sup>27</sup> stool-pigeons and informers were regarded as "good prisoners." We have been told, apparently from official federal records, the story of a convict<sup>28</sup> who was sentenced for manslaughter. In prison he was a trusty-guard in the fields. He shot and killed a co-prisoner who tried to escape and was paroled almost immediately after. A killer outside, he was regarded as a model prisoner inside, although always doing the same thing; killing.

All this shows that our prisons are unnaturally structured surroundings; they do not reflect the real world, its driving forces, its probable succession of fairness and attainment, fault and failure. In confinement there is no relationship of equal men: all human relations are unreal, fictitious, counterfeit.

<sup>22</sup> Why do we call it "underworld" when many of its members own the most expensive cars, stay in the best hotels and are buried in ten thousand dollar caskets? See Illinois Crime Survey, Chicago, 1929, p. 1029.

<sup>23</sup> "There are in prison world certain individuals who because of former social, political or financial prominence; because of reputations acquired through newspaper notoriety during their careers and trials; because of intramural prominence gained through escapes, the holding of good prison jobs or natural superiority in the form of physical or intellectual prowess—form what may be called a prison aristocracy. Such individuals . . . come to be regarded by their less highly endowed fellow convicts as oracles." Nelson, *loc. cit.* pages 18 and 19.

<sup>24</sup> On the professional pride of the more "ad-

vanced" criminal see Annual Report of the Commissioner of Correction, Massachusetts, 1937, p. 4.

<sup>25</sup> Cell Block 4, known among the inmates as the "Brown Palace," is used as quarters for "inside trusties." Brown Palace was the most fashionable hotel in Denver when cell block 4 in Canon City was built.

<sup>26</sup> Blake McKelvey, *American Prisons*, University of Chicago Press, Chicago, 1936, p. 12.

<sup>27</sup> The ringleaders of the great Canon City riot had climbed high in the social scale of the institution. "At the time of the riot Daniels was employed in the laundry . . . Pardue was employed in conveying coal from the coal pile . . . to the boiler room," Report of the Governors Special Committee, p. 3.

<sup>28</sup> Cooper, *loc. cit.* pages 429-431.

On this driest sand of a social Sahara we want non-swimmers to learn to swim.

The ecological aspect of personal and social disorganization has been the subject of careful consideration. We speak of delinquency areas, of degraded and degrading neighborhood and of the ascendancy of bad companionship. Like a burning lens prison concentrates all these malignant forces and turns them on the convict. He can not escape the powerful prison mores, and nowhere does this group give him the slightest support, as long as he does not descend to its muddy level.

#### IV

Have we ever reflected upon the form of social organization by which we try to reform the prisoner? Prison life shows the reversal to the habits of savage and primitive groups. Sir John Lubbock<sup>29</sup> has remarked: "No savage is free . . . His daily life is regulated by a complicated and apparently most inconvenient set of customs, as forcible as laws, of quaint prohibitions and privileges." That is exactly the pattern into which we force the life of the prisoner. There is no diversity of stimuli, calling out deliberation and initiative. There is no room for weighing and selective endeavor. There is no freedom of associative arrangements, one fundamental truth and general law: The order of the place. This order is a necessity, but not the exclusive goal of penal treatment. Prison is nothing but an intermediate stage between freedom

and freedom. Prison is only one link in a great mechanism of social control. It cannot be permitted to usurp the selfish rôle of being its own object. The figures of our criminal statistics impeach the fundamental error of our penal practice: prison operates for the momentary order and peace of the institution instead of providing for the order and the peace of the community in the future.

This simplified and dried-up mode of life knows one great and unpardonable crime against its faultless majesty: the attempt to get away from this atrophy of will, from the depreciation of man's deepest and most valuable instincts and that crushing monotony which cries for change, excitement and thrill. It is a sound and normal reaction for every living being to avoid mischief. There is much talk of slum life and how it breeds crime. We are not afraid to call today's prison a slum, separated from our insight by walls and bars, and our puritan desire to keep vice, crime, death and other annoying problems out of sight. Prison, in its present form, is still a disintegrating miniature social unit, a real slum, although it is well swept, the rails are polished and shining, the cell-houses are heated and lighted, soap, clean towels and shower-baths abound and the toilets are copiously disinfected. All this outward neatness brings the moral sordidness more into prominence to the alert observer.

The prison community not only bears resemblance to the organization of the savage tribe, but to the disintegrating small town with its forcible impositions

<sup>29</sup> Quoted by John Dewey and James H. Tufts, *Ethics*, New York, 1908, p. 428.

of obsolete rules and dull mores.<sup>30</sup> Of the infinite fund of human relations only the crudest and oldest is left: command and obedience. All non-conformant life has slipped underground. If there is no one to command and to be commanded (because nothing is more exhausting than the commanding of discontented and non-resisting men) an overwhelming dullness sets in; the same one we can watch in small towns where they sit, smoke, chew, spit, gossip and idle away their time and backbone.

## V

The continued pressure, put on an individual and aimed at ends he has nothing to do with, produces two kinds of reactions. One is that the prisoners attempt to appease the unbearable oppressors by cunning make-believe. Nowhere is deception more easily accomplished, nowhere more profitable than in prison. The second form of reaction is still more dangerous. It is rebellion. The spirit of contradiction may be repressed, but the more it is subdued, the deeper it takes root and the more explosive it grows.<sup>31</sup> Remember that these rebels are unoccupied rebels, cramped in contracted quarters, with endless nights to brood and say amaz-

ing things,<sup>32</sup> forced into temporary submission by mere physical force and no compulsive idea. Here in prison the convict's mentality is warped. He becomes disabled for life in common and for common endeavor. The prisoner judges society by its inability to solve his problems<sup>33</sup> in his greatest distress, and may never find his way back out of this hostile and negative attitude.<sup>34</sup>

Finally the question of wardens and guards cannot be omitted. We have some excellent, many mediocre wardens. More serious, and disregarded, is the problem of the prison guard. A book which drew its material from the Federal Bureau of Investigation tells us that there are guards who can neither read nor write, and others who possess criminal records.<sup>35</sup> Most of the guards are poorly paid and poorly trained. "Of 75 prisons reporting wages for guards, 33 showed a range in annual salaries from \$534 to \$1,000."<sup>36</sup> The economic status of the prison guard frequently ranges below the unskilled laborer and thus his morale can not be too high.<sup>37</sup> What the guards are doing is done sometimes, apparently satisfactorily, by trusty prisoners.<sup>38</sup> Murchison has mentioned a certain prison in the United States where the inmates

<sup>30</sup> In any community orthodoxy is the price of peaceful living . . . It is well for the individual prisoner to keep within the limits of this orthodoxy." Nelson, *loc. cit.*, pages 19, 20.

<sup>31</sup> The writer has depicted this evolution in his paper: *Die Psychologie des Gefangenen*, Schweizerische Zeitschrift fuer Strafrecht, 1930, pages 452-474.

<sup>32</sup> "And then, somebody's got to go to prison, or those judges could not hold down their jobs." Nelson p. 23.

<sup>33</sup> Prisoners do not always rebel against imaginary wrongs. "Convicts sentenced from the same court within 60 days show a dis-

crepancy varying from 10-20 to 20-30 years" for the same offense. Report of the Governor's Special Committee, p. 45. Many returned parole violators are among these rebels.

<sup>34</sup> See the story of Dillinger in Wilbur LaRoe, *Parole with Honor*, Princeton, 1939, pages 175 and 176.

<sup>35</sup> Cooper, *loc. cit.* p. 406.

<sup>36</sup> Gill, *loc. cit.* p. 69.

<sup>37</sup> "Quite evidently from the moment that shot was fired (by a convict) the thought of each guard was exclusively upon his own safety." Report of the Governor's Special Committee, p. 12.

<sup>38</sup> Gill, *loc. cit.* p. 69.

"averaged nearly a hundred per cent higher in the Alpha test than did the guards in the same prison."<sup>39</sup> In the shape of these figures society presents itself to the convict and conveys an utterly false picture of its moral and physical forces.<sup>40</sup>

For want of other forms of satisfaction the guard turns to dominance.<sup>41</sup> The most unfeeling and ruthless types among the prisoners follow this example. Thus it happens that the "big shots" rule the prison with an iron fist. They imitate the agents of society by their domineering tyranny, their kangaroo courts, their beatings, and their executions. The brutish prison tsar is the caricature of our punitive emphasis and our reformatory failure.

## VI

We think we can distinguish between absolute and relative limits of penal treatment. Every one knows what we mean by these terms. It may be, however, that the words "primary" and "secondary" would be preferable, since it is hazardous to introduce the idea of the absolutely impossible in social planning. The first primary limit, as we see it, is presented by the insoluble conflict of institutional massing and indi-

vidual treatment. For reasons of economy and safety we are forced to herd, at best, 500-800 men together. We are able to "keep" this aggregation of human beings; we are certainly able to do a lot in the way of "punishing," but there is no mass technique of reform. The few exceptions we note in every prison would have mended their ways without our interference.

Somewhat connected with this friction of opposed forces is the dilemma of custody and reform. Reform is anti-custodial. Custody is anti-reformatory. Confronted with this dilemma; custody or reform, we must admit that there is no intermediate solution. We must decide what deficit we want to put up with what returns. Olden times have tried the mere custody system and have failed. We should dare to try the untainted reform system, knowing that we have to expect a certain percentage of break-downs in the sphere of safety. These cases will form a special problem. Slowly a number of them will emerge which will have to be kept in separate institutions of maximum security and accordingly minimum reform.

A further limit is given by the ineradicable negative attitude of all of us toward the released convict.<sup>42</sup> In the

<sup>39</sup> Quoted by the Illinois Crime Survey, p. 454.

<sup>40</sup> "With the meager pay and no prospects of increase, the Warden has been compelled to accept men who have broken down in other positions and have looked upon the work of a guard as an easy life for declining years." Report of the Governor's Special Committee, p. 19. The Report goes on: "There is much jealousy and lack of confidence among them. There is little self-reliance and practically no reliance by one upon another."

<sup>41</sup> There might be some unconscious envy embedded often in this urge for dominance. At least that is the way how some prisoners look

at it. "Lo the poor guard. In his mind's eye he can see us as we were in the free world; with money, ravishing women, all the sensual delights which must be forever unattainable to him. We have had this. He has never had it, never will have it." Nelson, *loc. cit.* p. 15.

<sup>42</sup> A prison farm was set up near a Rocky Mountain penitentiary. The citizens of the district protested the presence of the inmates in their community. Not one violation of law was committed by any of the inmates during that time, whereas several of the protesting citizens had been arrested for felonies of various descriptions. Report of the Governor's Special Committee, p. 43.

depth of our hearts none of us really believes that prison, even the best, reforms.

This is the fatal vicious circle: Many convicts burn for freedom and are afraid of its unsurmountable risks. They know that their punishment has not ended when they leave the grey house. They know that, to a certain extent, each of them has received a life sentence. Not trusting our judgment, our foresight and our reform, we force upon parolees a child-like life, we deny them a glass of beer, a driving license, and in some states they must be home (or what we call a home) when darkness falls.

All this distrust renders the men distrustful, insecure, earmarks them as convicts and acts like a powerful counter-suggestion. We are sure of one thing: if we would dare to strike some prisoner's past completely off our records and our memory, more reformatory energies would be unfolded than dangers set free.

The proof is furnished by the fact that many convicts who escaped, changed their names and became respected citizens<sup>43</sup> and were never detected until they were involved in a motor accident. They had to break the law in order to live a life of lawfulness, and they had to be delivered first from

society's angry and fearful pedagogy, before they could be redeemed. Finally, it is the convict himself who erects an insurmountable barrier to our reformatory efforts. He is fully aware that our reformatory ingenuity is not yet out of its adolescence. The prisoner has no confidence that confinement is necessary for his own good, that reform is sought by modern and approved scientific means and by the most competent distributors of curative power, and that he will be released as soon as "reform" is accomplished.

The prisoner distrusts both our healing skill<sup>44</sup> and our eagerness to cure. He is, therefore, non-cooperative. He struggles against our moves and all our steps: punishment and reform alike. Even if we wanted badly to correct his shortcomings his inner resistance frustrates the most friendly and well-balanced scheme of moral orthopaedy.

We are somewhat doubtful whether a further conflict should be included among the absolute limits or be placed at the borderline of both distinctions. We mean our inability to see the difference between the intact and the decayed prisoner. We rely on the sentence of the court. After the man has been admitted in handcuffs, he is a "criminal," and we start dispensing to sick and sound alike the same treat-

<sup>43</sup> The famous swindler and forger Henry Meiggs fled in 1854 from San Francisco to Peru. "In his home of refuge, this wretch, namely, later became a distinguished and useful citizen, a great investor, a trustworthy financier . . . it was granted to him to die as an honored man."

*California, A Study in American Character* by Josiah Royce, Boston, 1889, pages 430 and 431.

<sup>44</sup> This mistrust is well illustrated by the ensuing passage written by a prisoner: "Up to a certain point, the more privileges the convicts have, the more work the officers have: beyond that point, the officer's work decreases. Working the other way, a point is reached beyond which a curtailment of privileges means increased duties for authorities." In all of that is much truth, but a deep distrust at the same time." *An open letter to Society* by Convict 1776, *loc. cit.*, p. 121.

ment. This medicine, although it might not hurt the real patient does not improve the health of the healthy. A good many of our prisoners have committed a felony, a formal crime which, however, may not reflect a vicious disposition, but vicious surroundings.<sup>45</sup> In some cases decent motives, loyalty, and delicate emotions are involved and simply covered up by a rash plea of guilty.

These cases collide easily with the disciplinary exigencies of the institution. To a superficial judgment they appear most in need of custody, punishment, and reform. Feeling only formally guilty or innocent they are bad prisoners and eager to grumble. Being bad prisoners they are not likely to be released on parole. Injustice, they think, is thus added to injustice, and finally a real rebel, perhaps a genuine criminal now, evolves from the mistakes of our insight and our treatment.

<sup>45</sup> We found the following passage in a petition for executive clemency. It was written by the publisher of the newspaper of a small mining town: "I have had many friends in the penitentiary—there are lots of good men there. Men who at heart are as good and square

We can break down the mammoth prisons. We can reduce or abolish idleness. We can elaborate better and safer systems of classifying prisoners into occasional offenders, persistent criminals, and a large group of weak-minded psychopaths and semi-insane. We can train our prison officers, give them better pay, more security and ease. We can cross all these secondary limits of penal treatment and can thus achieve a good average job and do much better than we do now.

The primary limits, however, will remain. They render penal treatment an indispensable but ineffective instrument of social control. Yet the more should we try to develop alternatives to confinement, the more should we evoke from oblivion that greatest and gentlest device of pre-penal treatment: prevention, and in vain would we look around here for bounds that can not be passed and for limits.

as the average "mill run" of humanity . . . Knowing some of the men in X . . . I sometimes pat myself on the back for being lucky and wonder how I or a lot more kept out of the penitentiary." This man's acquaintance with the residents of his town assures us of the reliability of his judgment.

### 1. *A Disclaimer and Explanation*

When we use the term "indeterminate sentence," we do not mean to ask any indefinite, arbitrary, irresponsible power for the prison administration; we do not ask that legislatures and courts should be excluded from control over the penalties for crime and the methods of treating offenders . . .

### 2. *A Positive Demand*

We do insist that the legislature provide sentences sufficiently prolonged for effective educational methods in the case of educable persons who are capable of reformation, and control, sufficiently prolonged in the case of habitual, professional, dangerous criminals, to afford protection against them and to be deterrent in general society.—*Problems of the Prison Association*, by Charles R. Henderson.