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## PIONEERS IN CRIMINOLOGY: CHARLES LUCAS—OPPONENT OF CAPITAL PUNISHMENT\*

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Dr. Normandeau is the author or co-author of two articles that were published in earlier issues of this *Journal* upon the subject of *Delinquency in Canada* (Vol. 57, No. 2; Vol. 58, No. 3). He also co-authored an international bibliography on *Group Treatment in Correctional Institutions* (Vol. 59, No. 1). His most recent prior article was a biography of *Arnold Bonneville de Marsangy* (Vol. 60, No. 1).

Charles (Jean-Marie) Lucas was a well-known Parisian barrister, prison administrator and publicist, whose public influence in France and abroad in the field of penal reform was primarily important in the second and third quarters of the nineteenth century.

Born in Saint-Brieux (Brittany), near the shore of the English Channel and at approximately 250 miles from Paris, on May 9, 1803, Lucas went to Paris for his College and University studies and received his degree in law in 1825.

A single event was to determine the final profile of his life-time career. In effect, public competitions were opened in 1826, one by Count de Sellon of Geneva and another by the Society of Christian Morality of Paris, on the subject of the legitimacy and the efficacy of the death penalty. Lucas, as a youthful abolitionist, wrote a major essay on the topic and submitted it independently to both competitions. Both prizes were awarded to Lucas, whose work received careful attention by the press. Lucas was bound by them to become a prominent figure in the political and intellectual as well as in the more specialized penal reform circles. The work was published in 1827.<sup>1</sup> From that moment, Lucas' major endeavors were to deal mainly with criminological problems, especially in the field of penology. He was to try all his life to find an efficient replacement for the death penalty.

From 1828 to 1830, he published a three-volume work on *The Penitentiary System in Europe and*

*United States*. He sent this work to the members of the Chambers of Deputies and Peers with two special petitions demanding the introduction of the "penitentiary system" in France. This so-called penitentiary system referred at the time to the idealized version of the regime at the Walnut Street Jail in Philadelphia. The Duke of Laroche-foucauld-Liancourt had visited this jail in 1793 and published a small book on it in 1796.<sup>2</sup> The prestigious French Academy awarded Lucas the Monthyon Prize for his work, and his book was also publicly praised in the Chambers' precincts. His case was good. The Chamber of Deputies unanimously asked the government in November 1830 to call Lucas to an administrative office where he could help in the execution of the penal reform.

As inspector general of French prisons, a job he would hold until his retirement in 1865, Lucas had a direct contact with the practical penal reality. On the basis of this empirical knowledge and of his reading of the literature on prisons coming from the United States (he never himself came to this country), he wrote his major book in 1836 to 1838, another three-volume work<sup>3</sup> about prison reform wherein he took a definite position "against" what is known as the "Philadelphia system of prison discipline" and "pro" a revised version of the "Auburn system of prison discipline."

This work consecrated his fame in France and elsewhere. What has been called in Europe the

\* The author wishes to thank Dr. Thorsten Sellin who was responsible for his primary contact with the works of Charles Lucas.

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<sup>1</sup> DU SYSTÈME PÉNAL ET DU SYSTÈME RÉPRESSIF EN GÉNÉRAL, DE LA PEINE DE MORT EN PARTICULIER (Paris, 1827.)

<sup>2</sup> DES PRISONS DE PHILADELPHIE (Philadelphia, 1796). An English edition was published at the same time. The French version was reissued several times in France between 1796 and 1830.

<sup>3</sup> DE LA RÉFORME DES PRISONS OU DE LA THÉORIE DE L'EMPRISONNEMENT (3 volumes, Paris, 1836-1838).

"penitentiary science" was born. It consisted of a systematic study and elaboration of the "best" prison system to adopt. For many decades to come, Lucas was to assume leadership of the movement. The French Great Encyclopedia of 1880 called him in fact the "creator of the penitentiary science," and the International Penal Congresses of Stockholm (1878) and Rome (1885) recognized Lucas as the "Dean of the penitentiary reform and our master to all of us." On that international plane, we may add, incidentally, that Lucas was a correspondent member at one time or another of the Prison Societies of Paris, London, Dublin, Philadelphia, Boston, and New York, as well as of the National Institute for the Advancement of Sciences (Washington).<sup>4</sup>

As an active member of the famous French Academy of Moral and Political Sciences for 50 years, Lucas gave lectures of hundreds of papers which were, most of the time, published in book form later on. All in all, his work covers nearly 40 volumes. It is thus impossible to present Lucas' ideas in terms of the common perspective provided by the bibliographical succession of even his major writings. It seems preferable here to present his substantial thoughts in terms of six unit-ideas: (1) the prison system, (2) the death penalty, (3) juvenile institutions, (4) transportation, (5) war, and (6) causation.

The first idea is the most important because the question of the "best" system of imprisonment was at the core of a large humanitarian movement in the nineteenth century and forms an important chapter in the "social history" of this century.

#### THE PRISON SYSTEM

The Old Regime (before 1789) used imprisonment primarily as a means of holding the suspected delinquent or the accused before trial or the convicted before sentence and execution, but not as a method of punishment *per se*. This latter idea came with the Enlightenment and the rational and humanitarian thinking of people like Beccaria, Montesquieu, Rousseau, Diderot, Voltaire, Howard, Bentham, and Romilly.<sup>5</sup>

<sup>4</sup> Further bibliographical notes about Charles Lucas can be found in two obituaries. Bérenger, 18 MÉMOIRES DE L'ACADÉMIE DES SCIENCES MORALES ET POLITIQUES DE L'INSTITUT DE FRANCE 483-525 (1894); Simon, 19 MÉMOIRES DE L'ACADÉMIE DES SCIENCES MORALES DE L'INSTITUT DE FRANCE 57-90 (1896).

<sup>5</sup> The few scattered institutional antecedents have been described in some articles by Thorsten Sellin: *Filippo Franci: a Precursor of Modern Penology*, 17 J.

The first half of the nineteenth century was to be the carrier of their ideas and was to become the cradle of the four major types of prison systems, which, when reduced to their most simple elements, are the following: (a) the "congregate" prison, where prisoners live, work, eat and sleep in common, and are allowed to talk; (b) the "absolute solitary confinement," identified originally with the Walnut Street Jail, where prisoners live in an individual cell night and day without working; (c) the "relative solitary confinement," identified with the Eastern State Penitentiary in Philadelphia (variously labeled also cellular, Pennsylvania, or Cherry Hill), where prisoners live in an individual cell night and day but are allowed to work; and finally (d) the so-called "silent" or "Auburn" system where prisoners work and eat in common but in silence during the day, though they sleep in individual cells at night.

The first prisons in France were patterned on the congregate type, with all the promiscuity involved in these circumstances. Following the French Revolution of 1789, members of the Constituent Assembly proposed bills to reform prisons, some in favor of the solitary confinement system, some in favor of the silent system. These bills never passed, however, because of political upheavals. Another attempt to install solitary confinement in French prisons was made in 1814 by Louis XVIII. The turmoil of the Hundred Days of Napoléon prevented the execution of the law. The second major attempt by France to reform its prisons thus failed again. A Royal Society of Prisons was then created in 1819 in order to improve penal institutions. Just at the time when the Society's work was to lead to a major reform, it was dissolved by the July Revolution of 1830.<sup>6</sup>

The following years, however, were to be the most fruitful. The period 1830-1848, in effect, was

CRIM. L. & C. 104 (1926); *Prison Reform in Belgium*, 17 J. CRIM. L. & C. 264 (1926); *Dom Jean Mabillon: a Prison Reformer of the 17th Century*, 17 J. CRIM. L. & C. 581 (1927); *The House of Correction for Boys in the Hospices of St.-Michael in Rome*, 20 J. CRIM. L. & C. 533 (1930); *The Historical Background of Our Prisons*, 81 ANNALS 1 (1931). See also his book: *PIONEERING IN PENOLOGY: THE AMSTERDAM HOUSES OF CORRECTION IN THE 16TH AND 17TH CENTURIES* (Philadelphia, 1944).

<sup>6</sup> A fine historical penological sketch of this French period, as well as up to 1850, is found in Thorsten Sellin's *Introduction to Beaumont & Tocqueville, On the Penitentiary System in the United States* xv (Edwardsville, Southern Illinois University Press, 1964, first published in 1833). See also Cary, *France Looks to Pennsylvania*, 82 PENNSYLVANIA MAGAZINE OF HISTORY AND BIOGRAPHY 186 (1958).

probably the most active time of discussions on prison reform that has ever existed, at least in France, if not everywhere. A publicist of the time wrote, indeed, that "there is no question, not even a political question, which has engendered a greater amount of publications . . . It seems that one cannot die without having done, with his testament, a little brochure on the penitentiary system."<sup>7</sup> And Lucas was to write himself, ironically, that "the penitentiary reform question became one day fashionable and asked only some wit, without the necessity of any practical knowledge; so that, in a nation as gifted with wit as ours, an innumerable amount of writings were and are written which will constitute in a very short while a course in penitentiary literature."<sup>8</sup>

The main point of the debate by then was focused on the efficacy of the solitary confinement system as exemplified in Philadelphia, versus the silent system used in Auburn.

Alexis de Tocqueville and Gustave de Beaumont were the first and most noted of the supporters of the separate discipline. In 1831 these young magistrates persuaded the minister of the interior to commission them to visit the United States and report on the prisons there. During their tour of this country, they discovered a storm raging in American prison circles as to the value of the disciplines used in its two leading prisons. Auburn officials tried to convince the French commissioners that France should adopt the silent system, since separating each convict during his entire confinement made madmen of many of the prisoners at Philadelphia. On the other hand, the officials at Eastern State Penitentiary argued that the Auburn system was too lax, and that the solitude of their own system actually reformed the convicts by giving them an opportunity to meditate on their crimes and, by their gaining on "inner light"—one of the central tenets of Quaker theology—to correct their evil dispositions. In the official reports of their trip to America, published in 1833,<sup>9</sup> Tocqueville and Beaumont tried to remain nonpartisan and to avoid committing themselves to the support of either of the American

prison disciplines. Actually, they did believe that the Philadelphia institution did more to reform convicts. It was thus but a short time after this that Tocqueville and Beaumont, because of severe criticism of separate confinement in France, were defending the Pennsylvania prison in the Chamber of Deputies and creating in the European mind an image of it as the most important penal institution in the Western Hemisphere.

The report of Tocqueville and Beaumont set the stage for the struggle over adoption of the separate system. Other writers and reformers took their cue and entered the fight, some in support of and others in opposition to individual confinement. Tocqueville was undoubtedly the leader of the partisans of the Philadelphia system. Their opponents sided with Charles Lucas who was giving his allegiance to the Auburn system.<sup>10</sup>

Lucas was already one of the most distinguished of all French penal reformers when he published in 1836–1838 his *Reform of Prisons or Theory of Imprisonment*. His humanitarian position was clearly stated from the beginning. Punishment should not be the aim but merely an instrument of penal policy. The true object ought to be the protection of society, and the means to this end: the prevention of crime and reformation of the criminal. Reformation, in this context, was understood as turning the obnoxious and troublesome into tolerable, acceptable, and, if possible, useful citizens.

<sup>10</sup> We shall here focus our attention on the two leaders, Tocqueville and Lucas. For other works of the time, see AYLIES, *Du Système Pénitentiaire et de ses Conditions Fondamentales* (Paris, 1837); BÉRENGER, *Des Moyens Propres à Généraliser en France le Système Pénitentiaire* (Paris, 1836); BLOUET & DEMETZ, *Rapports à M. le Comte de Montalivet . . . sur les Pénitenciers aux États-Unis* (Paris, 1837); BLOUET, *Projet de Prison Cellulaire* (Paris, 1843); DEMETZ, *Résumé des Questions Pénitentiaires* (Paris, 1844); DUCPÉTIAUX, *Du Progrès et de l'État Actuel de la Réforme Pénitentiaire et des Institutions Préventives aux États-Unis, en France, en Suisse, en Angleterre et en Belgique* (Brussels, 1838); FAUCHER, *De la Réforme des Prisons* (Paris, 1838); FOUCHER, *Sur la Réforme des Prisons* (Rennes, 1838); MARQUIS DE LAROCHEFOUCAULD-LIANCOURT, *Documents Relatifs au Système Pénitentiaire* (Paris, 1844); MOREAU-CHRISTOPHE, *Rapport à M. le Comte de Montalivet . . . sur les Prisons de l'Angleterre, de l'Écosse, de la Hollande, de la Belgique et de la Suisse* (Paris, 1836); DE L'ÉTAT ACTUEL DES PRISONS EN FRANCE, *considéré dans ses rapports avec la théorie pénale du code* (Paris, 1837); DE LA MORTALITÉ ET DE LA FOLIE DANS LE RÉGIME PÉNITENTIAIRE (Paris, 1839); VARRENTRAPPE, *De l'Emprisonnement Individuel* (Paris, 1844); see also *REVUE PÉNITENTIAIRE ET DES INSTITUTIONS PRÉVENTIVES*, edited by L. Moreau-Christophe from 1843 to 1847.

<sup>7</sup> Moreau-Christophe, *Défense du Projet de Loi sur les Prisons*, 3 *REVUE PÉNITENTIAIRE* 400 (1846).

<sup>8</sup> Quoted in Pinatel, *La Vie et l'Œuvre de Charles Lucas*, 18 *REVUE INTERNATIONALE DE DROIT PÉNAL* 126 (1947).

<sup>9</sup> ON THE PENITENTIARY SYSTEM OF THE UNITED STATES (Engl. trans. by Lieber) (Philadelphia, 1833). See also Pierson, *Tocqueville and Beaumont in America* (New York, 1938).

Lucas' motto, stated in the introduction to the book, was significant in regard to his general approach. He wrote in a sociological vein where society was held liable for the criminals in its wake: "It is time that human justice washes its hands in front of God and men of the terrible reproach to the effect that it contributes to increase rather than to diminish the stain of crime."<sup>11</sup> His philosophy of punishment was in fact a philosophy of social rehabilitation when he said, "Society finds the criminal. This is a first healing. However, the criminal is in fact a sick person in a social sense who must be healed not by medical cures but by social cures."<sup>12</sup> So that, by healing criminals, we heal society itself. For Lucas, thus, education was to represent the instrument *par excellence* of a penitentiary system; the aim of such education was to repair the failure of social education. Prisons were, in a sense, schools. By the same token, and well before the Italian school, Lucas turned the attention of lawyers and criminologists "from the crime to the criminal," as the old cliché has it. As Lucas put it:

"Legislators have forgotten the actors and focused only on the acts. . . . Such codes are based on false and vicious presumptions. . . . False, because in reality the degree of perversity of a crime changes with each actor since the intentionality is different. . . . Vicious, because reformation is more or less rapid according to this degree of perversity; thus the length of punishment should be proportionate to the actor's perversity and not to his violation as such, because, for two offenders having committed the same crime, a certain amount of corrective detention will be necessary for one and another amount for the other. But when punishment is proportionate to the criminal act only, we are opened each day to detain a reformed man and to release an unregenerated man. Repressive justice should then be focused on agents and not on acts."<sup>13</sup>

Lucas' method of study, finally, was scientific and comparative. "The important study," he wrote, "is the one related to man, his nature, his penchants, to the factors which maintain him in the right track or alienate him from it as well as those which may help to bring him back to it after the fall. The stability of the social body demands from the legislator, nowadays, that element which has long been absent but is now prevalent

in the medical approach to the human body, i.e. *science*."<sup>14</sup> And reflecting more specifically on his work, he added: "There are two languages in Society, one is science and is concerned with the finding of truth, the other is teaching and is a way to get the masses to understand what has been discovered rigorously by science. I hope that my language pertains to the first one."<sup>15</sup> As to his comparative method, Lucas was quick to study the penal legislations and their practical outputs in terms of penal institutions of several countries. It is in this sense that the American penitentiary system was highly praised by Lucas. "Why not supplement," he wrote to the Chambers, "our lack of knowledge by the abundance of their researches? On what basis could we disdain the evidence of their experience, and trust only ours?"<sup>16</sup>

Lucas' practical solutions, again well in advanced of his time, were in the realm of a *progressive prison system* and the use of *indeterminate sentence* and *parole*, although this terminology was obviously not used by him and appeared on the "penological verbal market" only several decades after.

These modern ideas were delineated by Lucas, for example, as early as 1827, when Lucas demanded sentences of minimum and maximum where the judge would have considered the extenuating circumstances (which means in fact a consideration of the actor rather than, or in addition to, the act). Five such categories of minimum and maximum were recommended: up to five years of imprisonment, 5 to 10, 10 to 15, 15 to 20, and 20 to 25. However, once the criminal was in prison, a discretionary power over each prisoner's time to serve was allowed by Lucas to a disciplinary board, and eventually to what we could call today a parole board, whose function was to reclassify each prisoner according to his moral improvement. In this fashion, the Court sentence was to become, in fact, wholly indeterminate. Thus, a prisoner condemned to 20 to 25 years of imprisonment could be classified in category 15 to 20 after two years, in category 10 to 15 after another year, in category 5 to 10 after two years and a half, and then, as a member of the last category, he was to become eligible to parole which he could gain, let us say, after six months. Condemned to 20 to 25 years, this individual could win his freedom in only 6 years, if rapid signs of regeneration could

<sup>11</sup> 1 DE LA RÉFORME DES PRISONS OU DE LA THÉORIE DE L'EMPRISONNEMENT (Paris, 1836).

<sup>12</sup> *Id.* at 25.

<sup>13</sup> *Op. cit. supra* note 1, at 276, 281-82.

<sup>14</sup> *Op. cit. supra* note 11, at LXXV.

<sup>15</sup> *Id.* at 29.

<sup>16</sup> 1 DU SYSTÈME PÉNITENTIAIRE EN EUROPE ET AUX ÉTATS-UNIS XIII (Paris, 1828).

be detected by the board. Another prisoner with the same 20 to 25 years sentence, however, could stay 10 years in the same category, and be only at the stage 10 to 15 years after 25 years of imprisonment. As Lucas put it:

"In the first instance, justice would have ascertained the perversity of the criminal in an exaggerated negative way; in the second, in an exaggerated positive way. But the control of experience in prison would repair these errors, one of which would have unduly extended the captivity of a man who was not dangerous any more, and the other would have given back to society a man still dangerous."<sup>17</sup>

Lucas later reduced these five categories to three, which he called "categories of moralities," consisting of a class of exceptions or punishments, a class of trials or testing, and a class of rewards or permissions. But this "moral screening" was essentially a reformulation of the very same principle imbedded in his progressive system of five categories.

This idea of classification was coupled with one stressing the further different disciplinary regime in each category, with a progressive liberalization of the rules. The last stage would even be accompanied by relatively free walks of the prisoner in the city or the village in order to reconnect little by little the culprit with the community. This very same classificatory idea led him also, obviously, to stress the need for separate institutions for adults and juveniles, and for males and females. (We may mention here, even if it is not directly relevant, that Lucas knew the difficulties he would encounter from the inside in order to implement his scheme. Using the old image of the congregate prisons as training schools which breed crime and grant Ph.D.'s in criminal know-how, Lucas, as a forerunner of the sociology of prison organization, talked about the underground structure of the prison society with its professors and teachers of vices, the inmate's hierarchy of power, and the prisoners peculiar dialects, rules, politics, policing and penalties or rewards, etc.<sup>18</sup> Lucas made here the well-known distinction between what he called "social criminality," *i.e.*, the ordinary criminality which grows outside prison walls, and "scholarly or erudite criminality" which is formed in prison. One of his solutions to the problem was the establishment by the government of a special edu-

cational Institute devoted to the training of professional correctional administrators and personnel.)<sup>19</sup>

But what physical setting could "best" implement these ideas of penitentiary reforms? Lucas, as well as his contemporaries, had the two main models already well described by Tocqueville and Beaumont: The Philadelphia and the Auburn systems.<sup>20</sup> Tocqueville and his followers had sided with the Philadelphia system; Lucas and his sided with a revised Auburn system.

Lucas believed that life in common during the day was absolutely essential to the preservation of the mental and physical faculties of man. Man was born sociable and total solitude, like in the Philadelphia system, was a state against nature. Man was bound to live in society, and it was among members of this society that he had to learn to behave in a proper social way. As he put it: "Solitary confinement cannot be for a long term the right preparation for the social milieu from which he stemmed and where he must return when he will be set free from prison."<sup>21</sup> Lucas would have permitted the use of separate confinement, but only for those awaiting trial, for those sentenced to two years or less, and as an extraordinary punishment for incorrigibles and convicts who violated prison regulations. And, even in the case of persons sentenced to two years or less, if the term was served in solitary, Lucas recommended an automatic reduction in sentence to a maximum of one year. He also felt that prisoners subjected to this discipline should be allowed to speak to each other, to families, and to friends, with permission, and to attend chapel services together. As for the bulk of prisoners living under the silent Auburnian system, he would never allow the use of corporal punishment or the whip, as it was done in Auburn to enforce the rule of silence. He would enforce

<sup>19</sup> *Op. cit. supra* note 16, at LXXIX.

<sup>20</sup> See the following studies on the subject: BARNES, *THE REPRESSION OF CRIME: STUDIES IN HISTORICAL PENOLOGY* (New York, 1926); BARNES, *THE EVOLUTION OF PENOLOGY IN PENNSYLVANIA* (Indianapolis, 1927); TEETERS, *THE CRADLE OF THE PENITENTIARY: THE WALNUT STREET JAIL AT PHILADELPHIA: 1773-1835* (Philadelphia, 1955); TEETERS & SHEARER, *THE PRISON AT PHILADELPHIA, CHERRY HILL* (New York, 1957); DePuy, *The Walnut Street Prison: Pennsylvania's First Penitentiary*, 18 *PENNSYLVANIA HISTORY* 130 (1951); DePuy, *The Triumph of The Pennsylvania System as a State's Penitentiary*, 21 *PENNSYLVANIA HISTORY* 128 (1954); Cary, *supra* note 6.

<sup>21</sup> 3 *DE LA RÉFORME DES PRISONS OU DE LA THÉORIE DE L'EMPRISONNEMENT* 484 (Paris, 1838).

<sup>17</sup> *Op. cit. supra* note 1, at 308.

<sup>18</sup> *Id.* at 282-83.

this rule by the threat of an increase of the time to serve in prison since his system provided for an indeterminate sentence.

Lucas, in addition to his argument of sociability, put forth three main objections to the Philadelphia system: (a) it increased expenses in construction and operation; (b) it increased the rates of physical and mental disabilities; and (c) it increased the rates of recidivists.

Tocqueville et al. agreed with the first point. However they ingeniously argued that the danger of riots and escapes in prisons with the silent discipline was much greater than in institutions on the Pennsylvania plan. This raised personnel costs to ensure security, thereby offsetting the difference in construction and operation expenses. As for the rates of disabilities and recidivists, this matter could be discussed only on the basis of the statistics given by the American administrators and partisans of each system. Obviously, two difficulties were involved here in assessing the validity and reliability of these statistics. First, the statistics *de facto* collected were scarce. Second, the collection, organization and presentation of these statistics were often done by each group with the explicit a priori purpose to prove a point—contrary to one another—, thus biasing the value of these official statistics. In fact, the same set of statistics was sometimes turned upside down by one group to prove exactly the reverse position taken by the other group on the basis of this very same set of statistics. In the United States, the Boston Prison Discipline Society, headed by Louis Dwight, was prominent to use statistics in this fashion to defend the Auburn system, whereas the Philadelphia Society for Alleviating the Miseries of Public Prisons proceeded just the other way around. The usefulness of these statistics was certainly not improved in France when Lucas et al. relied on the statistics published by the Boston Society whereas Tocqueville et al. relied on the Philadelphia Society's publications. In fact, what has been said by Barnes about the unfairness and dishonesty (or perhaps it was only plain naïveté) of the American belligerents could be applied to the French antagonists:

"A careful examination of the polemic pamphlets of both parties cannot fail to impress an impartial reader with the fact that neither was qualified to cast the first stone. Both were fiercely partisan and both were disgracefully unscrupulous

in their use of statistics designed to support their cause or damage that of their opponents."<sup>22</sup>

Be that as it may, the supporters of the Pennsylvania system in France were making headway, despite the strong opposition of Lucas et al. An administrative decree in 1841 outlined a program which concerned individual separation by day and night. But the advocates of the Philadelphia system, feeling that a legislative act would be more permanent and authoritative than an administrative circular, supported legislation from 1843 to 1848 in the Chambers of Deputies and Peers in this regard. Lucas et al. had already proposed in 1840 a bill providing for the creation of a system of prisons on the Auburn plan. It was defeated. This time, as of 1843, the supporters of a bill for the introduction of the Pennsylvania discipline in French prisons were larger than ever in prestige as well as in numbers. They had strong batteries firing rounds in defense of the separate system. Tocqueville himself introduced the bill on July 5, 1843. However, because of the opposition Lucas was able to muster, and because of certain different points of view among the Philadelphia partisans themselves as to the appropriate length of the separate confinement (from a maximum of 10 years to a full term of the sentence), the debates lasted for five years. As finally accepted, for presentation to a final vote, the bill provided for isolation by day and night for the entire length of a prison sentence.<sup>23</sup>

But, once again, political revolution was to interfere with social reform. The bill was on the point of being voted when the Revolution of February, 1849, overthrew the government which had sponsored it.

Not all was lost for the supporters of the separate system, at least for a short while. An administrative decree in 1849 confirmed the one dated from 1841 and ordered both the continuation of work already begun and the construction of new departmental prisons on the separate discipline plan. Thus, by the end of 1851, despite the legislative defeats of Tocqueville et al., forty-seven departmental prisons had been established on the solitary plan and fifteen more were in the process of con-

<sup>22</sup> Barnes, *The Historical Origin of the Prison System in America*, 12 J. CRIM. L. & C. 58 (1921).

<sup>23</sup> See details in CUCHE, *TRAITÉ DE SCIENCE ET DE LÉGISLATION PÉNITENTIAIRES* (Paris, 1905); VIDAL, *COURS DE DROIT CRIMINEL ET DE SCIENCE PÉNITENTIAIRE* (Paris, 1910).

struction. In this sense, Lucas et al. seemed to have lost the battle.

However, Louis-Napoléon ended the Second Republic by his *coup d'état* of December 2, 1851. Again politics wiped out the victories achieved by Tocqueville et al. The previous decrees were abrogated, the congregate system was fully re-installed, and a system of transportation to the colonies was instituted in 1854.

Under Louis-Napoléon's totalitarian tendencies, the entire prison reform movement was effectively suppressed for more than twenty years.

By the time when France underwent another revolutionary change in government in 1870, Tocqueville had died and Lucas was almost the only prominent figure in the field to hand on the tradition of prison reform to a new group of men who were to be active during the Third Republic. As a result, it was the moderate, compromise plan of Lucas, rather than the full separate system, which was embodied in the famous prison reform law of June 5, 1875. Only offenders sentenced to one year and one day or less were to be confined in the "solitary" prisons. The Auburn discipline would be used for all the other inmates.

Lucas had won a great victory, which was crowning his life's work. But he had been "lucky" in a way because politics, more than anything else, had killed the penal reforms of the Philadelphia type. In a socio-historical perspective, the relationship of the reform movement to France's political history, illustrating the close relationship of a nation's political development and its social and cultural history, is of significance today for a study of social reform strategies in a world where politics still has the final word.

#### THE DEATH PENALTY

The main theme of Lucas' first book in 1827 was focused on the death penalty where he took a firm abolitionist viewpoint. He attached great importance to the problem all his life and never abandoned a personal predilection for it. In fact, he used to say that he had been interested in prison reform only inasmuch as he had been looking for a "replacement penalty" to the death penalty.

The work of 1827 was devoted principally to an examination of the legitimacy and efficacy of the death penalty. On the philosophical level, he was defending the idea of the inviolability of human life, save for self-defense. Traditional viewpoints pertaining to the spirit of Christianity, the natural

rights of man and the rights of society to punish, were used in an elegant fashion by Lucas. On the practical level, however, Lucas was bolder. In a Beccarian style, he maintained three fundamental principles: (a) that the efficacy of penalties depends on the certainty and proximity of repression; (b) that the certainty is in inverse relationship with the severity of penalties; and (c) that, in this perspective, the death penalty was, of all penalties, the least repressive. Lucas then proceeded to prove these assertions by some statistical data related to the number of indictments and accused, acquittals, condemnations and commutations, about capital crimes in France for the years 1825 and 1826. If, by chance, the offender was arrested, there was a 50 per cent chance that he would be acquitted. Condemned, he had again a 50 per cent chance that death would not be pronounced in his case. Even if condemned to death, he had a 20 per cent chance of being pardoned. All in all, a capital offender had less than 1 chance out of 10 to die under the guillotine. How could the death penalty be effective and deterrent in such a state of affairs?

His interest in the question led Lucas to study the legislations in almost every country in the world, to write special petitions to the Chambers of Deputies and Peers of France as well as to the leaders of other countries.

It is astonishing that so many European countries around France have abolished the death penalty during Lucas' life-time or after whereas France still has it as of 1970. It may be significant in this context to know that Lucas' 1827 book on the death penalty will be republished in Paris in a few months.

#### JUVENILE INSTITUTIONS

Lucas' idea of the necessity for an individualization of treatment was bound to attract its attention on juvenile delinquents because it was obvious to him (as it still is today) that to combat criminality at its roots was the best safeguard for the future.

Lucas began by insisting that juveniles should be separated from adult inmates. As early as 1828-30, he proposed the creation of "schools of reform" for juveniles. His petitions to the Chambers at the time explicitly demanded the establishment of such special institutions for juveniles under an Auburn discipline. A strong emphasis on education was the main feature of his proposal. A specific project to this effect was proposed by Lucas in 1831 to a

special State Committee. In addition to his earlier general scheme, Lucas there stressed the necessity of a complementary post-prison institution, called "patronage," for juveniles. This patronage was to be equivalent, *grosso modo*, to a "house of refuge" or, in modern terminology, a "half-way house". Lucas founded with A. Béranger, the first society of patronage in Paris in 1833.

In 1832, the Paris institution for juvenile delinquents, La Petite Roquette, was to embody in its system of treatment many of Lucas' ideas. However, the system was to be modeled on the Pennsylvania system, and Lucas rejected it as obviously uneducational and unrehabilitative.

While waiting for the governmental action, private institutions for juveniles began to spread out. Lucas organized one of the first ones in Bordeaux in 1834. The same year, Lucas wrote a brochure where he suggested the establishment of "agricultural colonies" and then coined his well-known slogan: "The regeneration of the child by the land, and the land by the child." This stimulus led Demetz and Lucas to some practical endeavors. They became the founders, and for many years the heads, of agricultural colonies, Demetz at Mettray in 1839 and Lucas at Val d'Yèvre in 1843. These establishments had accommodations for 500 to 700 young offenders who were admitted when under sixteen. A family system was predominant. The institution consisted of various houses; each the home of a family of thirty to fifty inmates. The congregate system was used at Mettray, but the Auburn system at Val d'Yèvre, although in this last instance the cells looked much more like rooms than anything else. The importance of a new type of personnel as a prerequisite for constructive work was recognized as essential. Teachers were especially trained for educational and social work. The agricultural work gave ample opportunity for healthy employment. It was, in fact, a real educational system, based on moral persuasion rather than on force, with the object of making the juvenile capable of self-control and self-support. Discharged boys were placed under the supervision of a patron, and often the institution remained in touch with the boy's employer in his later years.

A law in August 1850 about the education and patronage of young inmates consecrated Lucas', Béranger's, and Demetz's works in this domain. And, in 1872, the State bought Lucas' institution at Val d'Yèvre, and so special institutions for young offenders began to generalize even more under the leadership of the government.

#### TRANSPORTATION

Lucas was preoccupied all his life with the unification of all criminal sentences into one consistent sanction: imprisonment. The time element was to be the central factor to aggravate or mitigate a punishment according to the moral aim in view. It is in this perspective that Lucas, as early as 1827, took a strong stand (a) against the "bagnes" (these hulks or shore prisons that had succeeded the French penal galleys), and (b) against transportation and colonization. He attacked particularly the then extensive English system of transportation to Australia as inhuman and inefficient. As he put it: "Societies must absorb their criminality and must not try to throw it out arbitrarily on an unknown land."<sup>24</sup>

The "bagnes" were replaced all right in 1854, but by transportation to the colonies, and not by imprisonment as wished by Lucas. The transportation system was even extended in 1885. It was to disappear only during World War II, when imprisonment then became the general and uniform punishment in France . . . more than a century after Lucas' suggestion.

#### CAUSATION

Causation of crime was viewed by Lucas as related to misery and a lack of education; to a lack in "civilization," as he put it. In a little study of criminality in France, in 1827, Lucas started from an analysis of the French criminal statistics for 1825 and 1826, and divided France into two groups, "the Bright France" and the "Obscure France," according to their intellectual and material resources, using indices like the number of book stores, the level of education, or the amount of taxes paid. "Bright" was identified with "civilized." He examined in these two Frances the crimes against property and the crimes against the person. He found fewer crimes against the person in the "Bright France" but more crimes against property. He thought it was significant in view of the fact that crimes against the person were more immoral. He concluded: "Thus, we have proven, with mathematical rigor, this great truth that, with civilization, our persons are more secure. Even our property is, because the relative increase of this type of crimes among civilized people, compared with others, is simply the result of the multiplicity for evil in the former since they are

<sup>24</sup> *Op. cit. supra* note 1, at 336.

richer."<sup>25</sup> In a similar vein and using extensively the available statistics for a series of years and from many places (France, England, Pennsylvania, Geneva, and Spain), Lucas tried to prove the moral influence of civilized nations on the decrease of criminality. His conclusion was as before: personal crimes diminish proportionately as civilization increases and even property crimes do so, in a way.<sup>26</sup> His thesis was clear, once more: the increase of well being, of work, of business, in short, the whole advance of material prosperity, brings with it a proportional increase in the number of crimes. The theory is to the effect that there is a proportion between evil activity (crime) and honest activity (commerce, industry, and affairs). It rests upon the principle that when the latter increases, there necessarily is a stimulation to the former, so that the increase in crime would be merely apparent, if it were exactly in proportion to the progress of honest activity. If we admit this premise that an increase in the number of crimes proportionate exactly to the increase in material progress is without importance, signifying in reality that crime is stationary, then it follows that an increase in crime proportionately less than the increase in prosperity really means that crime has diminished. We might therefore find in a given period double the number of crimes of the preceding period, and at the same time be obliged to recognize an actual diminution in criminality. Lucas wrote:

"Civilization, which is merely the progress of liberty, widens the abuse of liberty, precisely because it extends its use. To obtain an exact notion of the morality of civilization, we must, instead of contrasting liberty and civilization, place on one side of the balance the use, and on the other, the abuse of liberty. Let us establish the rule that the morality of civilization is to be judged by comparing the use with the abuse."<sup>27</sup>

This principle once posited, he sees little ground for alarm in the larger number of certain classes of offenses appearing in France, as compared with Spain:

"We are not called upon to give especially credit to a poverty-stricken and ignorant people because of the small number of harmful acts occurring in their midst. This fact is due to the lack of occasion for inflicting harm; to nothing else than an animal-like ignorance. The greater

number of such acts occurring among civilized peoples is merely the result of a larger development of human freedom."<sup>28</sup>

#### WAR

Lucas, in his state of blindness, beginning in 1863 and lasting until his death in 1889, did not change his fundamental activism in favor of penal reform. If one thing is true, it would be the contrary. However, he did find, in addition to his old interests, a new one. He became, after the Franco-German War of 1870-1871, an "apostle of international law." But this new role was not so far away from his role as a penal reformer. In fact, it was in complete harmony with his whole life and works. In effect, he started to study the death penalty problem by investigating the right to punish by society. The prison and the war problems stemmed from the same starting point, *i.e.*, the question of self-defense. He wrote:

"What is a reform relative to the abolition of the death penalty if not the consecration of the principle that, in the criminal penalty as in war, we must respect, with regard to the culprit as well as to the disarmed warrior, the human life, save in the case of self-defense? And what is a penitentiary reform if not a purely defensive right which consists in neutralizing the disarmed culprit by privation of liberty, but also a duty to work so as to rehabilitate the criminal in order to curb recidivism? Thus, in penal sanction as in war, we do not proceed against the law, which is based on the respect for life and for man's freedom; but we must, on the contrary, consecrate this respect by the proclamation of the principle of life's inviolability and of man's freedom, save the case of self-defense."<sup>29</sup>

On the occasion of the First International Penitentiary Congress, held in London, in 1872, Lucas concluded to the necessity of two complementary Congresses, logical consequences of the Penitentiary Congress; one for the abolition of the death penalty; the other, for the abolition of a war civilization, and the renewal of a peaceful Christian civilization. He focused on the idea of a "mediator" between the Nations, somewhat similar to a United Nations organization.

Lucas did not only talk on the subject. He was active in promoting a French organization for peace and an International Institute for the Rights of Man and writing to different political leaders

<sup>25</sup> *Id.* at XXXIV.

<sup>26</sup> *Op. cit. supra* note 16.

<sup>27</sup> *Id.* at XIV.

<sup>28</sup> *Ibid.*

<sup>29</sup> Quoted in Pinatel, *supra* note 8, at 130-31.

like Gladstone, the future Prime Minister of England, and Rutherford B. Hayes, President of the United States.

#### CONCLUSION

The principles of modern penology have always tended since the nineteenth century to establish a penitentiary regime largely opened to the ideas of scientific selection of the convicts. Modern penology has been dominated by the notions of individualization and progressiveness. When this conception is based on a more general doctrine where the supremacy of the prison as a mode of execution of punishment is stressed, we see immediately how Lucas fits perfectly well in the contemporary penological scheme.

In effect, let us only recall here some of the major concepts developed by Lucas, often quite in advance of his time and all initially developed in the few years between 1827 and 1838 when he wrote his three leading books: the importance of the criminal as an individual and actor over the crime and the act; classification (by necessity based on a social and personality study of the offender, however rough such a study would have been in Lucas' time); indeterminate sentence; parole; special institutions and care for juveniles; half-way house; etc. These concepts are also at the very heart of the modern conception, without any doubt, and can be encapsulated by the two more encompassing ideas which Marc Ancel, the leader of the New School of Social Defense in Europe, has stressed in his recent book: "a rational penal policy aimed at the systematic *resocialization* of the offender," and "an ever-increasing *humanization* of the new criminal law."<sup>30</sup>

It is thus not surprising at all to hear Ancel claiming the name and works of Lucas as a challenging figure in the field of criminal law and criminology, and as a pioneer in the movement of the New Social Defense which tries to achieve a balance between criminal law and criminology without any imperialism of one over the other so as to eliminate any "cold war atmosphere." As Ancel puts it:

"If time allowed, it might . . . be possible to seek in the doctrinal writings of the nineteenth century, underneath the thick shell constituted by the legalistic theory of classical criminal law, the first rather fugitive and cloistered glimpses of

theories of social defense. In this connexion . . . there was the important movement in favor of the *individualization* of penalties which was to make a significant and notable contribution to the legislative developments of the nineteenth century. . . . The prison reform movement which emerged in the last years of the eighteenth century with the work of John Howard and Elizabeth Fry in England, leading to the 'penitentiary school' of the mid-nineteenth century associated with the names of Charles Lucas, Bonneville de Marsangy, and Ducpétiaux, revealed the possibilities and the advantages of the re-education of offenders."<sup>31</sup>

And elsewhere: "when the United Nations, in 1958, adopted the *minima rules* on the treatment of inmates, prepared by the International Penal and Penitentiary Commission, they were joining the great tradition of John Howard, Elizabeth Fry, Charles Lucas and Bonneville de Marsangy. . . ."<sup>32</sup>

We may put a final point to our investigation by quoting a very sensitive thought that Lucas expressed near the end of his life and which should inspire in us the energy to follow his path and, at the same time, the modesty of self-limitation. On November 6, 1875, at the Institute, he said:

"Fifty years of studies, this is a lot in the lifetime of a man. But, it is so little in order to find a solution to the problem of penitentiary education when we think that, for 2000 years, people have discussed the role of education in the family and in the State. I have no illusion, and the only objective I may aspire to is to bring a very modest stone to the building of this great movement of penitentiary education which will develop only gradually in the course of the years thanks to the persevering work of science, the accumulated data carried by experience, and the continued action of time."<sup>33</sup>

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<sup>31</sup> ANCEL, *op. cit.* *supra* note 30, at 38-40.

<sup>32</sup> Ancel, *La Défense Sociale Nouvelle*, 14 REVUE DE SCIENCE CRIMINELLE ET DE DROIT PÉNAL COMPARÉ 201 (1964).

<sup>33</sup> Quoted in Pinatel, *supra* note 8, at 154.

<sup>30</sup> ANCEL, SOCIAL DEFENCE 24-25 (New York, 1966). See also Canals, *Classicism, Positivism and Social Defense*, 50 J. CRIM. L.C. & P.S. 541 (1960).

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Lucas wrote hundreds of pamphlets, memoirs and articles. Many of them have been published in the PROCEEDINGS of the Académie des Sciences Morales et Politiques, of which Lucas was a member for more than fifty years (1833-1889). We take the liberty to refer the reader to this primary source.