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PRISON LABOR*

HENRY THEODORE JACKSON†

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CHAPTER I

INTRODUCTION

Convict labor made its appearance with the dawn of civilization. The Pharaohs enslaved their captives and caused their notorious criminals to work in the mines. In all the Oriental countries the captives were made to work. From an early time China worked her convicts. Many were compelled to labor in the iron and salt works of the government. During the early history of the Hebrews an entire family was made to pay the penalty for the offense of a single member. The same principle of family responsibility prevailed in China and in Egypt. Hence in all these countries entire families were condemned to a life of labor.

The Athenians employed convicts in the silver mines, on galleys, and in the building of fortifications. Roman criminals were disposed of in several ways: they were made slaves; they were deprived of citizenship; they were condemned to labor, usually for life, in the mines of Spain.

Convict labor was practiced in Europe throughout the Middle Ages by selling the criminal into slavery. These, however, were unfortunate individuals who were unable to pay their fines or to make restitution to those whom they had wronged. This custom prevailed until the twelfth century.

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†State University of Iowa. The author is indebted to Dr. Fred E. Haynes, Assistant Professor of Sociology of the State University of Iowa, for his assistance and guidance in this study.—*H. T. Jackson.*

Prisons in Europe, during this period, were places of detention. Two of the noted prisons were the Bastile of France, and the Tower of London in England. The inmates were political offenders. Punishment consisted of fines, torture, and death. Detention for the purpose of punishment was infrequent, and penal labor was unknown.

The conditions that followed the decay of feudalism and the Black Death, broke up the institution of serfdom and called into existence the house of correction, which was specifically adapted to the occupational treatment of offenders.

By an act of parliament of 1550 houses of correction were built in England, not as places of confinement, but to help the poor. An opportunity was given the poor, the vagrant, and the unemployed to receive relief. Justices had the responsibility for the maintenance and administration. Hence the labor in the early prisons had for its motive the support of the institution and discipline.¹

The period from 1550 to 1700 was noted for the building of work houses or houses of correction. They were erected in London in 1550; in Amsterdam and Nuremberg in 1588; in Lubeck and Bremen in 1613; in Berne in 1615; in Hamburg about 1620; in Basle in 1667; in Vienna and Breslau in 1670; in Luneburg in 1676; in Florence in 1677; and in Munich in 1687. Nearly all were in Northern Europe, and in the Germanic states. The house of correction in Munich was intended for disobedient children, frivolous and insolent men, lazy boys and girls, stupid and refractory apprentices, day laborers who shirked their work, and for such as would do nothing useful, in order that these might be brought to a better life; or, if they were beyond hope, they were placed where they could not mislead and injure others. The spin-house founded by Peter Rentzel in Hamburg in 1669, at his own expense, because he had observed that the exposure of petty thieves and prostitutes in the pillory had made them worse instead of better, deserves special mention. In this institution he gave these men and women an opportunity to redeem themselves through labor and religious instruction.

John Howard, in the record of his travels, has much to say about the workhouse system. He reports that he found the workhouses in flourishing condition and mentions many of the occupations in which the prisoners were engaged. In Holland the men were rasping log-wood in the rasphouses; the women were carding, knitting, and weaving. All of them were set to work, as he says, upon the principle,

¹*Second Annual Report of the Commissioner of Labor*, Washington, D. C., 1886, p. 463.

"Make men diligent and you will make them honest." When the invention of mills for grinding log-wood rendered this form of hand work no longer profitable, the manufacture of woollen cloth was substituted. He observed other Dutch prisoners making fishing nets, sorting coffee berries, and weaving coarse carpets and sacks for the East India trade. In Germany the felons were at work upon the streets or the fortifications, or in the chalk quarries. At Nuremberg they polished lenses for spectacles; at Bayreuth they polished marbles; at Brussels they manufactured wall-paper; in Portugal they made rope and lace; in Spain they burned lime; at Naples they made shoes. The prison at Milan was noteworthy for the variety of trades taught: shoe-making, tailoring, blacksmithing, cabinet-making, wagon-making, wood-turning, leather-dressing, rope-spinning, nail-making, hand-painting on gauze, and many other crafts. At Zurich, some prisoners of the trusty sort were hired out to private citizens by the day.

These houses of correction were the real foundation of modern policies and ideas of convict labor. They were run on the public account system and instituted the plan of paying the prisoners for labor. The authorities classified the prisoners and laid the foundation for prison discipline. Their influence was good except for the effect of solitary confinement.²

Through the influence of Howard and other reformers, the idea of solitary confinement spread rapidly throughout the first quarter of the nineteenth century, not only throughout England but in the United States. This prevented for a period of several decades the development of labor as a reform movement. It was during this period that the prisons were subjected to the "model labor" system of the new cell-prison, the treadmill, and the crank.³

This movement held sway in England until 1894, when the policy was condemned by a special committee. In 1898 by an act of Parliament the use of the treadmill and crank was abolished. Through the powerful influence of labor unions England adopted the system of productive labor for convicts. During the last generation she has modernized her convict labor policies.

From 1597 to 1844 England cared for many of her criminals by means of transportation. In 1618 she began shipping criminals to

²Frederick Howard Wines, *Punishment and Reformation*, New Edition Revised and Enlarged, by Winthrop D. Lane, Thomas Y. Crowell Co., New York, 1919. Pp. 116-119.

³George Ives, *A History of Penal Methods*, London, F. A. Stokes Company, 443-449 4th Ave., New York, 1914, pp. 20, 21; *Second Annual Report of the Commissioner of Labor*, Washington, D. C., 1886, pp. 476, 477.

Virginia, because laborers were scarce in the new world. This continued until 1775.⁴ After the Revolution, England shipped her prisoners to Australia. Penal colonies were established there, where the prisoners worked and supported themselves under government officials. When their terms ended they received grants of land.⁵ It was here that the famous mark and parole system was invented. In the first stage the convicts worked about the prison or the place of detention. In the second stage they worked under increasing conditions of freedom.

In 1840 transportation was changed from Australia to Tasmania, because Australia objected to having criminals sent into her country. A little later transportation was abandoned, partly because the mother country adopted cellular confinement and penal servitude as punishment.⁶

We have dwelt to some extent upon the penal systems and methods of treatment of other countries, because of the bearing and influence upon the penal systems of our own country.

The first English colonists to the new world were men who adhered to well established codes of personal conduct. Hence as far as they were concerned, there was little need for penal institutions. But there were some men of different character sent over with these colonists. We refer to the indentured servants, who were sent to the colonies because of crime committed in the mother country. It was because of these that our first criminal laws were passed. In so far as these laws embraced labor, their motives were penal. The reformatory idea was not seriously considered.

Up to the nineteenth century the utilization and control of convict labor in the United States were personal and local. The employment of inmates of local houses of correction and indenture were the two methods used. Indenture was closely related to the lease system. It was first imposed for theft. The law required a thief to make restitution to the extent of three or four times the amount stolen. If he were unable to do this, he could, under the direction of the court, be sold into service. The lessee had full control of the convict, and the amount earned was applied on the restitution. This was the law in Massachusetts, New Hampshire, and Connecticut. At first Virginia forbade all penal servitude for native-born offenders, due, perhaps, to the fact that the indentured servants were becoming numerous in the colonies, and it was desired to make a difference between the native-born freeman and the foreign-born indentured serv-

⁴Ives, *A History of Penal Methods*, pp. 109-113.

⁵Ives, *A History of Penal Methods*, pp. 123, 152.

⁶Maurice Parmelee, *Criminology*, New York, Macmillan, 1920, pp. 363, 364.

ant. But in 1727 Virginia passed a law providing that an offender upon conviction could have his choice between twenty-five lashes at the public whipping post or being bound out to service for one year.

The other method of utilizing convict labor was through the local town or county houses of correction. The control was public in the local sense. The relatives or masters of the misdemeanants were compelled to supply the prisoner in the house of correction with tools and material with which to work. Eight pence out of every shilling earned went for fines and cost of keeping. If the prisoner was unable to work then either his master or relatives were compelled to pay for his keep. If the convict had neither relative nor master, then the warden was compelled to employ him and turn the earnings into the public treasury.⁷

These two systems were in vogue until the eighteenth century, when they were replaced by state institutions and county jails.

In Pennsylvania conditions were somewhat different, because of the influence of William Penn, who had been a prisoner in an old English jail for six months and knew the horrors of prison life. His outstanding idea in the treatment of criminals was clemency and his purpose was, when possible, rehabilitation. He had inspected the Dutch workhouses, which were developed for the reformation of law breakers through labor. This idea Penn introduced into his colony, and from 1682 to 1717 labor formed an invariable part of the punishment of those sentenced to the prison of Pennsylvania. This law continued in force until after Penn's death, when it was repealed, as being too far in advance of the times. During this period it does not appear that crime was any more prevalent or atrocious than in other colonies.

After the repeal of this law idleness prevailed in the prisons, with about the same result that was observed in England. In Connecticut conditions were about the same as in Pennsylvania. In this state there was a law requiring public supervised labor for prisoners in the county jails. But this law was never strictly enforced.⁸

In 1773 Connecticut secured an old copper mine as a state prison. The prisoners were placed in small wooden pens at night. Into a room twenty-seven feet long, ten feet wide, and less than seven feet high, thirty-two men were crowded at night. The prisoners were

⁷E. T. Hiller, *Development of the System of Control of Convict Labor in the United States*, Journal of Criminal Law and Criminology, Vol. V, 1915, p. 243.

⁸Orlando Faulkland Lewis, *The Development of American Prisons and Prison Customs*, Prison Association of New York, 135 E. 15th St., N. Y., 1776-1845, Albany, 1922, pp. 11, 12.

secured with iron fetters around the ankles. They were at first employed in the mines during the day, but as they used the tools and made use of the shaft to make their escape, this form of labor was abandoned, and the prisoners were required to make nails.⁹

In 1786, influenced largely by the Quakers, the legislature of Pennsylvania abolished capital punishment for all crimes except treason, murder, rape, and arson. All other crimes were to be punished by imprisonment at hard labor or whipping in public. This increased the number to such an extent that it was a tremendous task to care for the convicts. Road making was started, and the prisoners were worked in gangs along the roads. The effects were demoralizing; public sentiment was stirred up against this method and it was abandoned. It was not until 1880, when the coming of the bicycle helped to create a demand for good roads, that the general use of convict labor was greatly stimulated by the advent of the automobile.¹⁰

In 1790 Pennsylvania repealed the law requiring road work, and substituted labor in the prison for it. The prisoners were to work eight hours during November and January, nine hours during February and October, and ten hours a day during all the other months. The prisoners were to be treated according to their conduct. A great improvement was noted among the convicts at once. Conviction for crime was reduced from one hundred and thirty-one in 1789 to forty-five in 1793.¹¹

By 1800 there had been a relaxation in discipline in the Pennsylvania prison, and the pardoning power had been greatly abused until a period of demoralization set in, and it seemed that a complete breakdown would come. The society for the help of prisoners was discouraged. The legislature finally authorized two prisons to be built, one in the eastern part of the state and the other in the western part. The policy provided in this law was that the prisoners were to be placed in their cells, and they were to continue without labor for the duration of their term.¹²

Pennsylvania was the first state to take the radical step of placing each prisoner in a separate cell and keeping him in solitary confinement. The Walnut Street Prison constructed in Philadelphia had

⁹Lewis, *The Development of American Prisons and Customs*, p. 66; Wines, *Punishment and Reformation*, pp. 152, 153; *Second Annual Report of the Commissioner of Labor*, 1886, pp. 504, 505.

¹⁰Edwin Hardin Sutherland, *Criminology*, J. B. Lippincott Company, Philadelphia and London, 1924, pp. 448, 449.

¹¹Lewis, *The Development of American Prisons and Prison Customs*, pp. 28, 29.

¹²*Ibid.*, pp. 38ff.

thirty solitary cells, but provided no work. Maine and Virginia experimented with the system in underground cells.¹³ This theory which placed great emphasis upon solitary confinement in order to give the prisoner time to reflect, and hence to repent, overshadowed the theory of employment as a reformatory measure.

The close of the eighteenth century and the beginning of the nineteenth century was a period of prison building. In 1796 the New York legislature was persuaded to build the Newgate Prison. The first occupation, established two years after the opening of the prison, was the making of boots and shoes, which trade a life prisoner taught the other inmates. Other trades introduced in the prison were blacksmithing, the cutting of nails, carpentry, weaving, cooperage, and tailoring. In each of these trades inmates supervised the work. All the linen and woollen cloth and the stockings of the convicts were manufactured in the prison. The surplus was sold on the open market.¹⁴ New Jersey erected a state in 1798, and Massachusetts followed in 1805. In these two states the law provided that employment was to be given to inmates of both jails and prisons.

The prison at Auburn was erected during the years 1816 to 1819. The policy of this prison was that the prisoners should work by day and two should occupy one cell at night, but in 1819 the confinement at night was reduced to one in a cell, while the feature of the associated labor was retained. Thus was begun the famous Auburn system, which was originated by Elam Lynds. In 1825 he took a hundred convicts to Mount Pleasant and began the erection of Sing Sing Penitentiary. The entire work was substantially accomplished by convicts.¹⁵

The system opposing the Auburn system was known as the Pennsylvania system. Prisoners were to be kept in solitary confinement. The public account system was to be introduced into the Eastern Penitentiary, but each prisoner was to work in his own cell. There was to be no association at all. This same system was introduced into the Western Penitentiary of Pennsylvania at Allegheny in 1829.¹⁶

The Auburn system ultimately spread through the United States, but had practically no influence in Europe. The Pennsylvania system, after being adopted by New Jersey and Rhode Island in the state

¹³Ives, *A History of Penal Methods*, p. 174.

¹⁴Lewis, *The Development of American Prisons and Prison Customs*, pp. 30, 44, 45.

¹⁵Henry C. Mohler, *Convict Labor Policies* (May-February, 1924-25), *Journal of Criminal Law and Criminology*, Vol. XV, pp. 556, 557.

¹⁶John Lewis Gillin, *Criminology and Penology*, The Century Company, New York, 1925, pp. 396, 399.

prisons, was soon abandoned in the United States except in the state of its origin. On the other hand the Pennsylvania system became the standard in Europe.¹⁷

About 1844 doctors began to notice the correlation between solitary confinement and insanity, and hence the value of solitary confinement as a reformatory measure began to wane. The passing of the faith in solitary confinement left the penologists in a quandary as to what step to take next. Thus attention was again directed toward labor as a reformatory measure.

CHAPTER II

A SURVEY OF THE PRINCIPAL SYSTEMS OF CONVICT LABOR

Prisoners are employed under six different systems: the public account, the contract, the piece-price, the lease, the state use, and the work and ways systems. They vary in many particulars, but perhaps the most important difference is the extent to which private interests control the prisoner, his labor and his product. In examining these systems we shall take note not only of these characteristics, but also of other interests involved, namely, the ease of administration, the financial interests of the state, the relation of convict labor to free labor, the purpose of punishment, the opportunity of training, the attitude of business associations, and the value of the state farm both to the state and to the prisoner.

The public account system has no connection with private interest. The contractor is ousted from the prison entirely and the state, represented by the prison authorities, undertakes the role of producer, buying the raw material, setting the prisoners to work and marketing the product. The state takes all responsibility in buying, manufacturing, and selling. In fact, the state takes all the risk of success or failure. The prisoners are wholly under the direction of the state, both as to labor and as to discipline.

The public account system has been in operation from the very beginning of the prison system in this country. The industries that usually have been carried on under this system have been the production of twine, bags, boots and shoes, brooms, brushes, furniture, and other industries that do not require a heavy outlay for machinery. In Minnesota and Wisconsin it is used in manufacturing binding twine and farm machinery and has proved to be a great success. These products are sold in the open market.

¹⁷Sutherland, *Criminology*, pp. 398, 399.

The prison at Stillwater, Minnesota, has made a very spectacular showing. It started to produce binding twine in 1891, added farm machinery in 1907, and has used nothing except the public account system since 1909. During the first seven years the prison suffered a net loss from its productive industries but has made profits each year since that time, except in 1921 when a deficit of \$93,000 was reported. The total profit in 1919 was \$455,154. The institution has accumulated from its industries a revolving fund for productive purposes, which now amounts to nearly \$4,000,000.¹

The advantages of this system have been summed up as follows:

- "1. All profits go to the state.
2. No special advantages accrue to certain individuals as manufacturers over other manufacturers.
3. The convicts labor for the state with more spirit than for any private profiteer.
4. There is a complete unbroken state control and authority over the convict."²

This system also has disadvantages. It is almost impossible to secure a man who is a good prison administrator and at the same time a good business manager. The salaries are low, and the position uncertain, consequently there is difficulty in securing the right kind of a man for the place. Then, too, the state by not having to pay rent or wages can sell prison-manufactured goods more cheaply on the market than any other manufacturing establishment. Hence the wages of free labor can be driven down, as the working men discovered more than a hundred years ago. Attempts have been made to compel the state by law to sell at market price. This is a difficult thing to do. Ordinarily prison-made goods are of inferior quality, and if the state was not allowed to undersell its competitors there would be no sales.

Again, in time of depression when there is little demand for manufactured articles, the prison factories are closed down and the prisoners are out of work. This enforced idleness is demoralizing to prison discipline. It strikes at the whole theory of convict employment no matter how one looks upon it, whether from the penal, economic, disciplinary, or reformatory angle.

A second form of prison labor is the contract system. This system grew up largely because of years of failure, both in England

¹Sutherland, *Criminology*, pp. 456-457.

²*Journal of Criminal Law and Criminology*, Chicago, Vol. 15 (May-February, 1924-1925), p. 548.

and the United States in the management of prison finances. And further, with the invention of machinery, and the desire for cheap labor, the contractor turned to the prison for this supply. The prison authorities welcomed him. He could use this labor profitably and could enable the institution to make a profit on the prison labor.

The state undertakes to house, feed, clothe, and guard the prisoners; the private party employs them. The state builds a prison and work shop which is sometimes provided with machinery and power by the state, but the lights, tools, and raw material are furnished by the contractor. The prison officials, under the law, advertise for bids for the employment of the convicts, and the contract is let to the highest responsible bidder. The contractor pays the state so much a day, as stipulated in the contract, for the labor of each convict. This arrangement places the direction of the labor in the hands of the contractor, while the discipline remains in the hands of the prison officers.

The contract system has a number of advantages over the public account system.

1. The bookkeeping department need not be so elaborate.
2. The convicts are more regularly employed.
3. The state is able to avoid all labor and business administration.
4. It is easier to secure men to fill the place of warden, when the state does not have to look for a man with the united qualities of business and prison qualifications.

5. The contract system is more remunerative. The institutions that use this system pay as high as 65% of the cost, while the public account system has seldom paid more than 32%; although there are exceptions, as in the case of Minnesota.³

There are also decided disadvantages connected with the contract system.

1. It is neither right nor fair that the state, which is trying to reform convicts, should combine with the contractor to exploit the labor of these men.
2. The competition with free labor is at its maximum under this system.
3. The reformatory aspect of labor is lost sight of in the shadow of profit making.

Instances have been known where the convicts were in prison

³Mohler, *Convict Labor Policies*, Journal of Criminal Law and Criminology, Vol. XV (May-February), 1924-1925, p. 548.

for stealing or harboring stolen goods. When in the prison the convicts were compelled to put in substitutes for the real material. In cases of this kind the prisoners could not help feeling that the contractor deserved to be working along with them.

The contract system has occasionally been fairly satisfactory with reference to the maintenance and discipline of prisoners, but it has frequently been almost as bad as the lease system. The control is nominally in the hands of the prison authorities, but in many places the prison authorities have been agents of the contractor. The fact that the authority is divided often gives rise to controversies. These controversies generally arise over the kind of work or the speed with which it is done.

An illustration can be found in Maryland, and this illustration can be duplicated in many places. The record shows that during 1909 there were 3,067 punishments of which 736 were cases of "cuffing up" (hands stretched above the head and fastened in iron cuffs, and the weight either lifted off the heels or entirely off the feet). Almost invariably these punishments were recorded as due to "failure to get work done" or "indifference to work." That is, the prisoners were punished because the work did not satisfy the contractor. The commission in investigating this prison found that the conditions were unsanitary, that medical attention was lacking, and that many undesirable contracts were being made and that the warden was using underhand methods to prevent the passage of legislation to end the contract system.⁴

Samuel Gompers, late president of the American Federation of Labor maintained that the contract system had been so badly administered that public opinion finally arose against it and demanded its abolition. Mr. Gompers urged that all labor organizations should continue to struggle for the complete elimination of this system, and of prison competition with free labor.

Mr. Moyer, who was warden of Sing Sing Prison, and later of the Kentucky penitentiary, cites a contract made between the Board of Prison Commissioners of Kentucky and the Hogue-Montgomery Company for 200 able-bodied prisoners to be employed in broom, shoe, and box manufacturing business at the rate of 75 cents for a nine-hour day. This contract was to be renewed period after period at the discretion of the manufacturing company. The Hogue-Mont-

⁴Sutherland, *Criminology*, p. 453.

gomery Company continued to renew this contract for a term of years, although under it the prison lost in one year \$84,000.⁵

The contract system which had been authorized in Massachusetts and had actually been used there as early as 1807 did not get well started until the decade of the twenties. For half a century it was the principal form of prison labor, but because of agitation against it, it has been steadily going out of use.

A third system is the piece-price, which is only a modification of the contract system. Under this system the state directs the labor of the convicts, turning over a finished product to a contractor at a specified price per piece. As under the contract system, the state houses, feeds, clothes, and guards the prisoners. It furnishes also the workshop. The difference between this system and the contract system lies in the fact that the contractor no longer employs the prisoners, paying the state so much a head for them; but the contractor furnishes the raw material and pays the state so much a piece for making it up. Sometimes the contractor sends men to direct and inspect the work, but these cannot be considered as foremen responsible for production.⁶

This system was used in Pennsylvania at the beginning of the nineteenth century and in New Jersey from 1789 to 1838 in connection with the public account system. But except for a few temporary trials it had its greatest development in the decades of the eighties and nineties, when the agitation against the contract system broke out.⁷

This system eliminates to some extent the conflict of authority between the contractor and the prison authorities which existed under the contract system where, for example, the speeding up by the contractor was a constant source of friction. The piece-price system gives the prison authorities a greater opportunity to utilize the time of each prisoner as seems best to them.

This system, however, does not do away with all friction. Instances have been known where inspectors coming into the prisons have caused a good deal of trouble between the guards and the prisoners. The piece-price system was merely a means to escape censure—really the contract system under a somewhat preferable form.

⁵Samuel Gompers, *Convict Prison Labor*, American Federationist, Washington, D. C. (1921), Vol. XXVIII, pp. 497-500.

⁶Louis Newton Robinson, *Penology in the United States*, The John C. Winston Company, Philadelphia, Pa., 1923, pp. 159-160.

⁷Sutherland, *Criminology*, pp. 450-451.

A fourth system is the lease system. Under this system the state turns over its convicts to a certain party, known as the lessee, who agrees to house, clothe, feed and guard them. The lessee also pays to the state a certain sum of money for each prisoner received. In return, the lessee obtains the right to work the prisoners and the further right to all the products of their labor. It is purely a business contract, each side seeking to get as much out of the proposition as possible.

The lease system was authorized in Massachusetts in 1798; in Kentucky in 1825; in Missouri in 1839, when the prison was turned over to the lessee. It was used in Illinois from 1839 to 1867. But this system had its greatest development in the South after the Civil War. Those states had no prisons and were unable to build them. Prior to the Civil War the slaves were dealt with mostly by their masters, and since most of the criminals were negroes the South had had little need for a prison system. Consequently after the Civil War the convicts were leased to private parties, who used their labor in lumber camps, turpentine camps, or other camps, where they were far from civilization and completely under the control of the lessee.⁸

In 1867 Mississippi leased out convicts, who were employed on railroads and levees. Louisiana followed in 1868, the action being approved by General Hancock, the Military Governor. In Georgia the same year the Military Governor, General Ruger, farmed out two groups of negro convicts for \$3,500 a year. In 1869, a new lease was made for 500 convicts. This was done by General Bullock, the "scalawag" governor without legal authority. However, the legislature approved the action two years later.⁹

In all the states where the lease system was used terrible atrocities occurred. This fact aroused opposition which drove the system out of all the state prisons. Alabama, the last of the states to give it up, abolished it as a state measure January 1, 1924.¹⁰

It is still retained by law, if not in use, in the county prisons of Alabama, Louisiana, Mississippi, North Carolina, and South Carolina.¹¹ The lease system in the county prisons of Florida was abolished as a result of a protest by the North Dakota Legislature and the nation-wide publicity given to the killing of Martin Talbert in one of the county camps of that state in 1922.¹²

⁸Sutherland, *Criminology*, p. 451.

⁹Frederick Howard Wines, *Twenty Years' Growth of the American Prison System*, Proceedings of National Prison Association, 1890, pp. 85-86.

¹⁰Gillin, *Criminology and Penology*, p. 436; Sutherland, *Criminology*, p. 451.

¹¹*Florida Makes a Beginning*, The Survey, Vol. L (May 15, 1923), p. 210.

¹²*After Florida, Alabama*, The Nation, Vol. CXVII (July 11, 1923), p. 31.

The lease system places pecuniary interests in conflict with both humane and reformatory motives. Guards or foremen have charge of the camps where the convicts are kept, and where they are at the mercy of the lessee's agents. The greatest complaints of recent years have come from Florida. Here most of the convicts were negroes who worked in turpentine and lumber camps. Blood hounds were kept in some of the camps to trail negroes who tried to escape. They worked in swamps, standing in water waist deep. Because of this exposure some of them contracted rheumatism, and others pneumonia and many died. On January 1, 1912, of 1,421 state prisoners, 516 had been committed the preceding year. There were out of this number 96 escapes, 47 recaptures and seven deaths within the year. The company lost \$400 for each escape and death. In spite of the fact that some escaped and others died the company in that camp netted a profit of \$24,000 on turpentine and resin alone. The state received \$400 a year for each man.

The prisoners were forced to work even when sick, and if they refused to work they were punished by the company. Some of the punishments used were flogging on the bare back, hanging up by the thumbs and the "water cure," which was administered by placing the convict on his back, holding him, and forcing water through a funnel into his lungs. The foreman in one of these camps said that he was on the point of shooting one of the negroes, but changed his mind and knocked him down three times with the butt of his revolver. No hospital was furnished by the state and whatever medical or hospital care the convicts received had to be furnished by the lessee. The whole basis of this system is consideration of financial gain instead of consideration of the reform of the convict.¹³

Charles Edward Russell, in an article entitled "A Burglar in the Making," gives a vivid description of the camp life in Georgia. The punishment meted out was generally flogging, which was done by stripping the victims, turning them over a barrel, held by four men, and applying the lash until they sobbed and begged for mercy, their blood running down their limbs. Sometimes they were beaten until flesh dropped from their backs, and they had to be carried to their cots. Quite frequently they died during the night from the effects of the lashing.

The places where the men were herded together at night were filthy, dirt-covered, alive with vermin. The cracks in the walls per-

¹³Marc N. Goodnow, *Turpentine Impressions of the Convict Camps of Florida*, The Survey, Vol. XXXIV (May 1, 1915), pp. 103-108.

mitted the winter wind to drive in on them. They were without bed clothing and had scarcely sufficient clothes to cover their nakedness. The food consisted of boiled salt pork, which was filled with worms, and greasy corn bread. Inspection was made once in awhile by the state officials, but the lessee always knew ahead of time when he was coming. Before his arrival the men were put to work to whitewash the shanty where they stayed. When the inspector made his round, a guard or an agent always accompanied him so that no one ever dared to make complaint, knowing too well that it meant the lash.¹⁴

A number of attempts have been made to abolish the lease system. When the Populists were strong in Georgia they put into their platform the abolition of the leasing system. The people responded and the name was changed from leasing to contract; but in reality no change was made in the situation. The leasing system with all its evils remained in force until very recently. Alabama abolished the leasing system and adopted the contract system. Under this new plan the contractors were to employ men outside the state prison's wall. They were to be under the control of state wardens and guards who had state license.¹⁵ But the guards were to be paid by the lessee. The state was to furnish medical inspection, but the contractor was to provide food, clothing, shelter, and medical attendance. Everything was to be under the strict oversight of the state, but as might be expected the system proved to be about the same as before.¹⁶

In 1906 the Federal Government began to take an interest in the leasing system. Congress passed a law forbidding the use of peonage for debt. Under the Department of Justice investigations were made. It was discovered that the county officers leased their misdemeanants out independently of the state authority, and some of the abuses were more flagrant than those imposed upon felons. There were well developed methods of supplying laborers to such corporations as dealt in lumbering, turpentine, and mining. The sheriff would go out and round up a bunch of healthy negroes and arrest them for some petty offense such as drunkenness, and bring them to court. The court, perhaps, would not convene for six months. The prospective employer would go on their bond, which had been

¹⁴Charles Edward Russell, *A Burglar in the Making*, Everybody's Magazine, Vol. XVIII (1908), pp. 753-760.

¹⁵Mohler, *Convict Labor Policies*, Journal of Criminal Law and Criminology, Vol. XV (May-February, 1924-1925), p. 582.

¹⁶*After Florida, Alabama*, The Nation, Vol. CXVII (July 11, 1923), p. 31.

placed high. The negroes either had to go with the employer or to the chain gang by a summary sentence from the judge.¹⁷

The South has encountered many difficulties in ridding itself of the lease system. An illustration is found in the case of Georgia, when the Democratic party favored its removal. The state administration declared it impracticable, and the legislature granted a new five-year lease in 1897. The law increased the hours of labor and authorized subletting. The price of convicts thereupon arose and the state profited more than ever. The scandals and horrors of the camp and stockade arose with the price. The politicians, in 1905, again promised to do something, but again, after much show of seriousness, they declared the proposed reform impracticable, and the legislature granted a new five-year lease. The average price paid for each convict was \$220 a year. But in many cases they were sublet for \$630 a year.¹⁸

The South has an exceptionally difficult task. The memory of slavery, the misrule of the "carpet bag" government, the indifference of the South as to the fate of the negro, all these things make it hard to arouse public opinion. To all these things can be added the satisfaction of the politician and the state officers, who are always glad for a system that pays something into the treasury of the state; also the gratification of the lessee, who found the system of great benefit to him.

In spite of these difficulties progress has been made. Since 1900 private control has continued to disappear. Mississippi was the first state to use the lease system to any great extent. She was also the first to abolish the system as a state measure. This was done in 1890 by a constitutional amendment. The abolition of the county phase of the law was not until 1908, eighteen years after the establishing of the state farms.

The years 1907 and 1908 were banner years in penology for the South. They marked the high point of activity of the Federal Government. Many arrests were made and convictions secured. Five men, who had been running lumber camps for outstanding lumber companies, were convicted of denying negroes jury rights, and sentenced to the penitentiary for five years. Sheriffs and judges who had taken part in these proceedings were also punished. A debt peonage

¹⁷*Florida Makes a Beginning*, The Survey, Vol. L (May 15, 1923), p. 210; Mohler, *Convict Labor Policies*, Journal of Criminal Law and Criminology, Vol. XV (May-February, 1924-25), p. 567.

¹⁸Russell, *A Burglar in the Making*, Everybody's Magazine, Vol. XVIII (1908), pp. 753-760.

law of Alabama was declared unconstitutional by the United States Supreme Court. The reform movement went on in earnest, until the public conscience became indifferent.¹⁹

But the state is responsible for the whole system; for, under the law, the state delegates to individuals, or corporations, the power to punish crime by hard labor; and therefore the South cannot retrieve itself simply by punishing those who inflicted the wrong upon these convicts, but must work out a complete system whereby these prisoners may be employed at labor that will help to make men of them, and whereby the state can be relieved of its partisanship.

As a reformative measure the system is thoroughly bad. Sheriffs and judges obtain graft through malpractices undertaken to supply cheap labor for the lessee. It makes it impossible for the state to care for the health of the prisoners. It involves the most outright exploitation and the most dishonorable indifference on the part of the state to its duties and responsibilities. The chances of reformation are reduced to a minimum.

A fifth system is known as the state-use system. It came into use about thirty years ago and was especially designed to do away with many of the objections to the other systems. The goods manufactured under the state-use system are not sold in the open market, but are used either by the institutions making the goods or by some other state or county institution. In the states where it is used, the law requires the state institutions and their subdivisions to refrain from buying from outside firms, if the goods can be obtained from the state. In some respects it resembles the public account system because it requires the state to furnish business managers. On the other hand it relieves the prison officers from the task of finding a market for their goods.

The state-use system requires the cooperation of all the prisons within the state. When the states are zoned and there is trade between the institutions of the states zoned the system is known as the states' use system.

This system is simple or complex to manipulate, depending in general on the number of producing prisons and the number of consuming institutions or customers. If the number of consumers is large that complicates matters, for those buying will want some voice in the style and design of the goods. If the number of prisons is large there is the problem of running them as a unit. If either the

¹⁹Mohler, *Convict Labor Policies*, Journal of Criminal Law and Criminology, Vol. XV (May-February, 1924-25), pp. 580-581.

state-use system or the states' use system is to be practicable some form of centralization must take place.

In 1894 an amendment was added to the New York state constitution which provided that prison-made goods could not be sold in the open market. The next year the legislature enacted a law which provided that state institutions should purchase their supplies from the prisons unless the state commission of prisons certified that the prison could not produce the required line of goods. This latter provision proved the joker in the situation, and those who desired to continue the old contract system with its splendid opportunity for making money, saw to it that the new system did not work, and that the prisons could not produce what the institutions required. This sort of thing continued until 1911, when a commission was appointed to investigate the prison situation. The commission reported "a riot of waste and mismanagement in the conduct of the prison industries." Another commission was appointed in 1919 to work out a practical development of the system.

Adolph Lewisohn who was appointed as chairman of the commission of 1919, reported that not only has he a market fully adequate to consume all possible output from the prison industries, but that he is willing to recommend to the directors of the bureau of purchase that they supplement their purchases from the New York state prison department by purchasing commodities produced in the prisons of other states.

The law of the state of New York now provides that a central bureau to be established for the purchasing of commodities for all state institutions and departments, and that a bureau of standards be erected to bring about the adoption of standard specifications for all such commodities.

In the future the warden of Sing Sing will not receive orders for fifty-three different kinds of shoes but will receive only such orders as will be sufficient to cover the feet of the inmates of the state institutions.

Legislation has also been enacted for the payment of wages to prisoners and for creating the office of superintendent of prison industries. The way is now open for steady progress, in the opinion of Mr. Lewisohn, who has great hopes that this system will prove to be a very decided advance in the prison policy in the state of New York.

The problem of New York, in this respect, is easier than that of other states, owing to its greater market. In New Jersey, for

instance, the prison plant for the manufacturing of automobile tags can turn out in one year enough tags to supply New Jersey, Delaware, and Maryland. This fact has led the national committee on prisons and prison labor to propose the interchange of products among the state. A survey has been made which proves that there is ample market providing the districts be zoned and there is cooperation between the states within the zones.²⁰

To further the advance of the state-use system, the Conference of Allocation of Prison Industry, which was the first of its kind, was held in Salt Lake City, April 9-11, 1924. Delegates from the states of Colorado, Idaho, Montana, Nevada, New Mexico, Utah, Washington and a representative of the Department of Justice of the United States were present.

At this conference it was pointed out that the United States Bureau of Labor Statistics showed that in 1923 the amount of goods produced by state prison industries amounted to \$69,985,218 of which goods worth \$26,522,700 were put to state use, while the remainder, \$43,462,518, was sold in the open market in competition with goods produced by free labor.

Mr. R. S. Humphries, a member of the committee on Allocation of Prison Industries, stated that facts gathered by the commission on allocation showed that seventy-seven state penitentiaries and reformatories in the United States had approximately 67,000 prisoners in 1922. Not more than 40,000 were physically and mentally capable of work, and about 25,000 of those are required for the work necessary to maintain the institution, thus reducing the number for productive labor, to 30,000. Allowing 5,000 for agricultural work, and 5,000 to 10,000 for road work there would still be from 15,000 to 20,000 for industrial work to supply the million persons in state, state-aided, and city and county institutions throughout the country.

The Salt Lake Conference passed two resolutions: first, that the "states' use" system be adopted in every state, and second, that industries be selected in which the prisoners in the institutions can be effectively and constructively employed and that prisoners be paid such compensation as their conduct and efficiency warrant.²¹

Those in favor of this system claim for it that it gives a greater opportunity to the prisons to make the work purely reformatory in character; that it gives more time for training and education; that

²⁰Adolph Lewisohn, *Prisons and Prison Labor*, The Century Magazine, Vol. CVI (July, 1923), pp. 399-404.

²¹*Convict Labor*, Monthly Labor Review, Vol. XIX (September, 1924), pp. 706, 707.

it has met with the approval of free labor, owing to the fact that the state institutions are eliminated from buying in the open market.²²

In defense of the system Dr. E. S. Whitin says that state and city institutions consume about \$700,000,000 a year and that the prison population can produce perhaps \$50,000,000 worth or one-fifteenth of these commodities. Every prisoner who is physically and mentally capable, will be employed and able to support his family.²³

The disadvantages of this system are: first, prison production is inefficient, and therefore institutions refuse to buy from the prisons if they can find any excuse whatsoever for not doing so; second, the system does not furnish work for the prisoners. In 1921 less than one half of the convicts were employed in the industries under this system, and those that did work were employed less than six hours a day or less than thirty-four hours a week²⁴

Warden T. P. Hollowell of the state penitentiary at Fort Madison, Iowa, does not approve of the state-use system on the ground that the scheme is impracticable. He bases his judgment upon the experience of other states. In New Jersey where there is a prison population of 1,947, and where the state-use system has been in operation for a number of years, only 379 men were employed in the industries. This does not tell the whole story. The warden in response to a letter replied that these 379 men were employed only part of the time.

Warden Hollowell is opposed to the law enacted by the state legislature introducing the state-use system in the state of Iowa. He maintains that the prison at Fort Madison is self-supporting under the present management. The men are well cared for, both as to food and clothing and an effort is made to do what is possible to rehabilitate them. Therefore, he contends, the present system should not be changed.²⁵

In 1899 twenty-four states were authorized to use the state-use system, and in 1921 thirty-nine states were using it wholly or in part.²⁶ But this system as yet is largely a plan and awaits development.

A sixth system is the public works and ways. In this system the prisoners are taken to their work instead of having it brought

²²Robinson, *Penology in the United States*, pp. 166, 167.

²³E. Stagg Whitin, *The Prisoner: Public Servant*, The Survey, Vol. LI (October 15, 1923), pp. 69-71.

²⁴Gillin, *Criminology and Penology*, p. 437.

²⁵T. P. Hollowell, *Prison Labor*, Pamphlet, March, 1925, Fort Madison, Iowa.

²⁶Samuel Gompers, *Convict Prison Labor*, American Federationist, Vol. XXVII (1921), p. 497.

to them within the prison. Whenever one task is completed, such as the work on a building, or the construction of a bridge, or certain sections of a road, the convicts must move to their next job.

The public work and ways system was used in an early day in the construction of Sing Sing Prison and also of the Walnut Street Prison in Philadelphia. But the system was abandoned and not until recent years has it become popular.

V. E. Collett, general secretary of the Colorado Prison Association, gives an interesting account of the road work in Colorado. In 1908 prisoners were engaged in building a road from the boundary line of New Mexico on the South through Trinidad, Walsenburg, Pueblo, Colorado Springs, Denver, to Fort Collins in the extreme northern part of the state. These trustees were 150 miles from the prison, and were housed in tents. They were clothed in plain blue suits so that a person not acquainted with the situation would not know that they were convicts. They worked as many hours a day and accomplished as much as did free laborers. At the end of six months they had completed ten miles of road.

The men were happy and contented and took a great deal of pride in their own work. In the first thirty days, out of the ninety men, there were nine who escaped or attempted to escape, but nearly all of these were recaptured and taken back to the prison. In the next four months there were only two escapes or attempts to escape.

The law provided that for every month's work done on the road a deduction of ten days should be made from their time. This was in addition to their regular commutation. The men did not receive pay for their work.²⁷ Colorado under a later law now pays convicts for road building.²⁸

During 1909 and 1910 there were on the average about 100 convicts employed. In 1911 this number was increased to about 200 and toward the end of the year to about 300. In 1914, 50% of the state prisoners were at work on the road or on a farm adjoining the prison. By November, 1912, about 300 miles of road had been built; by 1917 over 1,200 miles of roads had been built at an average labor cost of \$400 a mile in the valley and from \$1,000 to \$2,000 a mile where the road had to be blasted out of the rocks in the mountains. The same road with free labor would have cost about \$2,000 a mile in the valley and from \$5,000 to \$10,000 a mile in the moun-

²⁷Samuel J. Barrows, *Convict Road Building*, Charities, Vol. XXI (1908-09), pp. 453.

²⁸O. R. Geyer, *Making Roads and Men*, Scientific American Supplement, Number 2112, Vol. LXXXI (June 24, 1916), p. 408.

tains or about 400% more. Nor is this all the saving for under this system the state is relieved of the expense of institutional care.

The road work in Colorado is on the honor system. Camps of from thirty to fifty men usually, or even as many as 100 are under one or two overseers or subordinates; they have been located as far as 300 miles from the penitentiary.²⁹

Road building was inaugurated in Montana in 1910 and has been continued ever since. The honor system is used; firearms are not allowed in camp. Three guards are used at a camp of from 100 to 500. Two guards are on duty during the day and one at night.

The number employed varies, but ordinarily includes about one-third of the total number in the penitentiary. In 1913 the forces number 225. During the first two years the percentage of escapes averaged less than 1%. In 1914 the loss was six. Ninety-five per cent of the paroled prisoners made good—a per cent that is much higher than in most states.

In 1911 Michigan enacted a law providing for the use of convict labor in either quarries or road building, according to which job would pay the most. The men were to be guarded by prison authorities. State prisoners up to 1914 had not been employed, but the county of Kalamazoo had used the system for misdemeanants with great success. Since 1914 state prisoners have been used and as a result Michigan has built some splendid roads.

In 1912 New York provided, by law, that the convicts could be employed near the Clinton and Great Meadows prisons. A sum of \$10,000 was appropriated for that purpose. It is stated that the men accomplished \$6,000 worth of work at a cost of \$700.

In 1912 New Jersey enacted a law providing for the working of her convicts on the public road. This act was, perhaps, an outgrowth of the crowded conditions in the prisons. There were 1,300 cells and at that time 1,450 convicts.

The road work started in December, 1912, near Trenton, under one foreman and two guards carrying concealed weapons. The crew traveled in a stage going back and forth from the prison each day. The men for the most part were long timers with only a few months to serve. They liked the work out doors. The authorities were enthusiastic and there was a general demand for a more extended system.³⁰

²⁹William E. Ross, *Honor Builds Roads and Men*, Town Development, Vol. XVII-XVIII (January, 1917), pp. 135, 136.

³⁰*Good Roads and Convict Labor*, Proceedings of the Academy of Political Science, Vol. IV (January, 1914), pp. 26-39.

California also uses convicts for road building, and has added a very unique provision to her law governing convict labor. The law states that the commission may pay the convicts wages not to exceed \$2.50 a day. A study of the cost of maintaining the prisoners under the old law revealed the fact that it was \$2.10 a day, and this is the price fixed to pay each convict. The law provides that the state shall deduct from the wages of the convict all the expenses of transportation, meals, clothing, medical and dental care, camp management, guarding, payment of rewards, and the cost of small tools. When this is done it is possible for the prisoner to save 75 cents a day, and in some cases this is done, but the average amount saved a day is 50 cents.

The prison road camps are honor camps in every sense of the word. A man in order to go to a road camp must make his own application, and his record must have been good. When he reaches the camp, for every two days spent in camp he cuts a day from his sentence. Good conduct and willingness to work have great weight with the Board of Pardon in granting paroles.

A reward of \$200 is allowed by the law for the capture of men escaping from the road camp, and this amount is prorated against the men who are in the camp at the time of escape. There are few who leave, although escape is possible under the conditions that prevail. Most of those who do escape are recaptured and returned to the prison with all their earnings and credit forfeited.

The law further provides that all skilled work shall be done by free labor. Bridge builders, steamshovel operators, truck drivers and the like are all free men in the road camps.

Authority remains with the prison or state as far as the discipline is concerned. But the cost of transportation, the salaries of guards furnished by the prisons, as well as other expenses of the camp are borne by the highway commission.³¹

Mr. Wilmot summarizes the value of the road building program as follows:

"It is healthy out of door work.

"It improves morals and helps reformation.

"It is uniformly attractive to men.

"It enables the payment of a wage to men.

"It competes less with free labor.

"It benefits all the people with a needed improvement at least cost.

³¹*Paying Convicts to Build Roads*, Literary Digest, Vol. LXXXIV (February 7, 1925), p. 25.

"It provides revenue to the state instead of causing cost.

"It decreases the amount of crime."³²

Some of the disadvantages to convict road building are as follows:

The spectacle of men in chains or under heavy guard is anything but a pleasing sight on the road. Temporary lodging does not offer opportunities for the application of those positive influences that we hope will become more and more a part of prison treatment.

The selection of convicts for honor work should be based upon temperamental fitness rather than upon the nature of the crime and length of term, but acceptance should be voluntary on the part of the prisoner and dependent upon satisfactory physical condition.

A wage should be paid not to exceed the net earnings of the prisoner.

The prisoner should be kept under the prison representatives acting as foremen and the construction work should be under the highway department acting as engineers.

It is true that road building will not solve all our problems of prison labor, yet there seems to be nothing more certain than that it will become more and more used, and that it will be one of the reformative measures of our prison policies.

Another form of outdoor prison labor is that of the penal farm. This movement was originated in Central Europe about a century ago and has been extensively used in Belgium, Holland, and Switzerland as a solution of the vagrancy problem.

The farm colonies in the United States started during the first decade of the present century. The first of these was the Cooley Farm at Cleveland, Ohio. This was soon followed by the Kansas City Municipal Farm, and the Washington, D. C., Workhouse Farm at Occoquan, Virginia. Since that time the idea has become quite popular in all sections of the United States.

The outdoor treatment of convicts has been worth while in Cleveland, Ohio, where 2,000 acres were purchased, cleared and tiled and where buildings for four sets of institutions were erected by trustees from the city workhouse and other prisons. In four years 5,000 prisoners served time on the correction farm, which is about ten miles distant from Cleveland. Such a spirit of cooperation was developed

³²Sidney Wilmost, *Use of Convict Labor in the North*, Proceedings of the Academy of Political Science, Vol. IV (1913-1914), pp. 63-64.

on the farm that the prisoners felt it was a cowardly thing to slip away. Consequently few escaped.³³

One of the outstanding penal farms in the United States is located near Putnamville, Indiana. This farm which consists of 1,892 acres was purchased in 1913 by the state for \$57 per acre. It is clay land which has been very badly used but is of fair quality and capable of being brought up to a good state of cultivation. Underlying it is Mitchel Limestone, which is regarded as the best road material in the state. On the farm is an old stone quarry, and the remains of lime kilns and potteries. It is a splendid property in the rough, and the labor that has been going to waste in our county jails is making of it a remarkably beautiful and productive estate.

The law authorized the transfer of prisoners from the state prison and reformatory, the idea being that mechanics and trained men could be had from these institutions who could contribute to the development of the new plant and act as foremen and thereby save expense. The first prisoners were transferred on November 30, 1914. They lived in tents until they had erected other buildings. On April 12, 1915, the governor by proclamation, declared the institution open. Prisoners were received rapidly; 1,117 were committed within the first six months, 2,322 in the year 1916; 2,536 in 1917. The number present reached 730 on one day. After the United States entered the World War and later, when the prohibition law became effective, the number of prisoners decreased until in 1920 there were but 922 commitments, and the daily average attendance fell to 293. For the fiscal year 1922 the figures showed 1,841 commitments and a daily average population of 555.

In advocating the establishment of this institution, the board of charities predicted a material reduction in the county jail population. This came about sooner than was expected. The number of commitments to serve sentence or for fines to the county jail and Marion County workhouse was 18,130 in 1914. This was the last year before the farm started. In 1916 there were 9,896. This noticeable reduction happened the first complete year of the farm's history. Since 1918 there has been a reduction. In 1922 there were but 3,663 commitments to serve sentence or to pay out fines.

According to the law a sentence that is under thirty days may be served in the county jail at the discretion of the judge.

The state furnished comparatively little money in establishing

³³Harris R. Cooley, *The Out Door Treatment of Crime*, The Outlook, Vol. XCVII (February 25, 1911), pp. 403-407.

this farm. An old saw mill was bought, water power installed, timbers cut and made into lumber, and the buildings erected by the men. These buildings were unsanitary and dangerous; but since that time they have been torn down and replaced by permanent brick and tile buildings, which are clean, sanitary, comfortable, and fire proof or nearly so. Paved roads and flower beds, have taken the place of mud and clay.

The institution has its own heat and light plant and pumping station. The industries consist of brick and tile, which products go to the state institutions, largely. Any surplus goes on the open market. Between 250 and 300 tons of limestone are crushed a day and go to the state highway commission for road building. General farming, stock raising, gardening, horticultural work and dairying are carried on. There are 70 or 80 acres of willows which furnish material for the manufacture of baskets, hampers, and a general line of willow ware.

Since the official opening of the institution, April, 1915, the farm has cared for 25,000 men. The turnover is rapid, for the average sentence is about 90 days. The farm employs about one guard for every twenty men. The escapes have been remarkably few, from the beginning about two a week. There has been a gradual improvement of the conditions on the farm. The institution is self supporting, or nearly so.³⁴

In 1919 Illinois established a penal farm. This farm is located a few miles from Vandalia. The present buildings are only temporary; new quarters will have to be provided for the growing population. The present population consists of 194 men, representing all walks of life.

Seemingly the institution is not a financial success. In comparison with other penal institutions of the state the cost per capita is high. Cost per capita for the Southern Illinois Penitentiary is \$326.55, for Illinois State Penitentiary \$292.18, for the State Farm \$462.30.³⁵

According to the law the judge may sentence a misdemeanor to the State Farm providing the sentence is for 60 days or more. Prisoners may be transferred from any of the other penal institu-

³⁴Amos W. Butler, *The County Jail and Misdemeanant Prisoners*, Journal of Social Forces (January, 1924), pp. 220-225; *Eleventh Annual Report of the Indiana State Farm*, Putnamville, Indiana, September 30, 1925.

³⁵*Illinois Blue Book*, Illinois State Journal Company, Springfield, Illinois. Edited by Louis L. Emerson (1925-26), p. 457.

tions of the state, provided they are over sixteen years of age and subject to parole.³⁶

Iowa has a farm in connection with her prison. It is located in Lee County and consists of 1,100 acres. The convicts from the Fort Madison prison farm it. These men are honor prisoners. They are managed by a superintendent, and usually stay until released or paroled. This is all the more remarkable when it is considered that many of them are lifers.³⁷

Florida, after doing away with the lease system, bought 18,000 acres of land at from \$5 to \$7 per acre. This tract of land is located near Raiford in the northeast part of the state. In 1921 there were about 500 convicts on the farm. The state had five men as guards. There was an average of one escape a month, which was a very low record. Nearly every kind of criminal was found there—burglars, murderers, and lifers. Goodwill and a fine spirit seem to pervade the place. Firearms, whips, and other means of coercion are absent.³⁸

Penologists are not all agreed as to the value of the penal farm, but the institution is bound to grow and develop for there are fewer objections to farm labor than to almost any other form of labor. It would seem, because of the many advantages offered, that a state like Iowa could utilize the farm to great advantage and not only become self supporting, but earn a profit as well. The wardens reporting on the farm generally agree that from 50% to 75% of the men in prison could be trusted on the farm. The penal farm is surely one of the "ways out" for the solution of prison labor.

CHAPTER III

ATTITUDE OF ORGANIZED LABOR AND MANUFACTURING ASSOCIATIONS TOWARD PRISON LABOR

No sooner had productive labor been introduced into our prisons, than opposition arose from the trade unions. As early as 1823 the journeymen cabinet makers of New York City assembled in mass meeting to discuss the threatened injury to their trade by the introduction of prison-made goods.

³⁶Smith-Hurd, Illinois Revised Statutes, Chicago Legal News Company, 32 N. Dearborn St., Chicago (1925), Chapter CXVIII, Section 15, p. 2095.

³⁷Hollowell, *Prison Labor*, Pamphlet, Fort Madison, Iowa (March, 1925), p. 6.

³⁸Orlando Faulkland Lewis, *The Spirit of Raiford—Florida's Substitution for the Convict Lease System*, The Survey (April 9, 1921), pp. 45-48.

The same year the mechanics of New York City petitioned the state legislature to abolish the competition of convict labor. Their grievances are summed up as follows: "Your memorialists have seen the convicts imperfectly educated in various trades, hired out to individuals, in some instances at reduced compensation, and in others employed for the benefit of the state, and the product of their labor thrown into the market and disposed of at a price very little above the cost of materials, to the ruin of free mechanics." They also proposed that convicts be employed in a state marble quarry.¹

The mechanics, at an early date, at one of their conventions stated their position as follows: "Mechanics are not called upon to pay in the form of taxes for the support of the prisoner only, but for the products sold that are manufactured in the prison from 40% to 60% less than the goods manufactured by free labor. Thus the wages are driven down to a point where a free laborer cannot live and support his family, and the consequence is that hundreds of mechanics are thrown out of employment and, in many cases, their families are reduced to beggary."²

During the business depression of 1834 competition from prison labor came to the attention of the unions in the state of New York. They were instrumental in inducing the legislature to create a special commission to examine the conditions of prison labor in the United States, and recommend to the authorities the trades that should be discontinued because of injury to free labor.³

The report stated that common humanity demanded that the prisoners be kept at work, not only for their own sake, but also for the good of the public. The labor must be productive so as to be self supporting in order to reduce taxation. The trade unions suggested that prison labor be used in road building. But the commission reported that there would be nothing gained as free labor was also employed in that way. The commission recommended that contracts be limited in time; that no new trades be taught to convicts; and that lock making cease, as it was dangerous to the public to teach it to convicts. It also recommended that contracts be made so that contractors could not undersell other manufacturers on the open market. Eli Moore, who was chairman of the commission was

¹John Rogers Commons, and Associates, *History of Labor in the United States*, New York, Macmillan, 1921, Vol. 1, p. 155.

²*Ibid.*, Vol. I, p. 347.

³J. P. Tracy, *The Trade Unions' Attitude toward Prison Labor*, Annals of the American Academy of Political and Social Science, March, 1913, Vol. XLVI, pp. 132-138.

condemned by the unions, and the report was described as a "deceptive" document.⁴

In 1864 the members of the Chicago Typographical Union went on record against the system of prison labor, and attention was given to the enactment of laws to prohibit the kinds of prison labor that would be injurious to free labor.⁵

In the early twenties the merchant-capitalist made his appearance. He was seeking a market where he could buy as cheaply as possible and turned for it, in part, to the prisons. Under the changed conditions in the prisons, and the pressure of the merchant-capitalist, the prison authorities were willing to let the convicts out by contract, either to do contract labor or piece-price work. This awakened concerted opposition on the part of the trade unions.⁶

Labor organizations have consistently and persistently opposed prison contract labor. They contend that convict labor has tended to lower the wages of thousands of laborers, and in some instances has virtually driven certain kinds of labor out of the field; that the contractor is seeking cheap labor and cares nothing for the welfare of the prisoner; and that each individual contractor is in the business for the profit he can get.

Labor organizations are not opposed to all prison labor. They are not against convict labor helping to build a state prison; but they are opposed to contractors employing convict labor and entering into competition with those who employ free labor. This not only reduces the amount of work that would have gone to free labor, but also forces the contractor to bid low in order to compete. Hence wages are driven downward.

In the iron-molders' trade, stove hollow ware has been virtually driven out of the foundries of the United States because of the competition of similar ware made by convict labor for the molders could not exist on wages for which they had to work in order to compete with convict labor, where labor was sold to the contractor as low as 65 cents a day.

The trade unions have always favored convict labor, but insist that employment should be primarily for the reformation of the prisoner. The unions maintain that the work done in our prisons

⁴Commons and Associates, *History of Labor in the United States*, Vol. I, p. 369.

⁵*Ibid.*, Vol. II, p. 37.

⁶*Ibid.*, Vol. I, pp. 155, 346.

today is of such a nature, that it does not fit the convict for work on his release, but is a positive hindrance to him.⁷

Labor unions favor the state-use system, on the grounds that there is greater opportunity for reformatory labor, and that it offers less competition to free labor. It was largely the efforts of the molders' union, associated with other labor organizations, which brought about the constitutional amendment of the state of New York in 1895. Thereby the state-use system was introduced and contract prison labor abolished in New York.⁸

Upon complaint of labor, Governor B. F. Carrol of Iowa appointed a committee, in 1912, to investigate the charges that had been made against Warden I. C. Sanders of Fort Madison Prison.

The committee reported that the complaint made by labor was largely due to the use of the contract system.⁹

This same committee recommended that contract labor end. As a result the General Assembly enacted a law providing that "the inmates of the penitentiary and the reformatory shall be employed only on state account and for state use and on any public works provided, however, that none of said employment for state account or state use shall be exercised or performed within the corporate limits of the City of Fort Madison or the City of Anamosa, unless performed on the state premises, and excepting such employment as pertains to existing contracts or exclusively for the benefit of the state" The law further provided that contracts that were in existence could not be renewed. It further provided that industries should be established so as to teach useful trades and callings in so far as practicable.

"Whenever services are rendered by any inmate at any institution under the supervision and jurisdiction of the board of control, the board of control may whenever practicable allow such inmates compensation which shall not exceed the amount paid to free labor for a like service or its equivalent, less such amount that the state is put to for maintenance as the board of control deem equitable, and in addition to deducting an amount to defray the cost of maintenance, the board of control may also deduct an amount sufficient to

⁷J. P. Tracy, *The Trade Unions' Attitude toward Prison Labor*, Annals of the American Academy of Political and Social Science, Vol. XLVI, March, 1913, pp. 132, 134.

⁸John Mitchell, *The Wage-Earner and the Prison Worker*, Annals of the American Academy of Political and Social Science, Vol. XLVI, March 13, 1913, pp. 11-14.

⁹*The Report of the Committee Appointed by the Governor B. F. Carrol of Iowa in 1912 to Investigate Prison Conditions in Iowa*, Des Moines, Iowa.

pay all or a part of the costs taxed to any inmate by reason of his commitment."

The law further provided that if an inmate performed work away from the prison as a "trustee" he should have deducted from his time ten days for each and every month so employed.¹⁰

This law has been supplemented by the act of 1924, which provides for the state-use system, to become effective July 1, 1927.¹¹

Organized labor went on record as favoring the principle of the state-use system at the first conference on allocation of prison industries, held at Salt Lake City, April 9-11, 1924. At the public meeting of this conference, there were present representatives of organized labor, manufacturing associations, women's clubs, and public welfare bodies, who indorsed the state-use system.¹²

Since its organization, the American Federation of Labor has opposed the various kinds of convict labor. The platform of 1881 contained a plank demanding the repeal of all laws which allowed contract labor by convicts. It condemned it as the "worst form of slavery" because it pauperized free labor, demoralized the honest manufacturer, and degraded the prisoner.

In almost every convention from 1881 to 1924, the American Federation of Labor has condemned prison labor in any form directly competitive with free labor. The convention of 1889 declared that prison labor should be abolished or regulated in the interest of free labor.

The committee that reported to the convention of 1897 urged that convict labor be used only in the following manner: "Convict labor shall be used in the manufacturing of such goods as shall be used for penal and eleemosynary institutions; that the convicts shall be employed for no more than eight hours a day; that all industry carried on in the prison shall be by hand labor, and that no printing plant shall be established in any penal institution."

The convention of the American Federation of Labor of 1899 petitioned all legislatures to enact such laws as would prevent the sale of convict-made goods in competition with free labor. Again, in 1900, the convention took a stand against the transportation of convict-made goods from one state to another.

In 1906 the convention of the American Federation of Labor reiterated the economic reasons for their opposition to prison labor

¹⁰Acts of the General Assembly of Iowa, 1915.

¹¹Code of Iowa, 1924, p. 490.

¹²*Convict Labor*, Monthly Labor Review, Vol. XIX (September, 1924), p. 707, Bureau of Labor Statistics, Washington, D. C.

systems. Although they emphasized the importance of employment for the prisoners, they protested against this labor being used for profit to the state or to individual contractors.

In 1910, the convention of the American Federation of Labor stated that the contract system of prison labor was inhuman, dishonest, and stupid; that there was no justification for its continuance. The arguments that the prisoner was learning a trade, so that when he was released he could earn a good wage, and that under the system the convict could earn something for himself were both said to be fallacious, for the profit went neither to the state nor to the prisoner, but to the contractor.¹³

President Samuel Gompers said at the convention in 1911: "Prisoners should be required to work not for the private profit of contractors, nor even for the financial profit of the state, but for their reformation and for the benefit of their dependents."

The committee in commenting on this report said: "We are unalterably opposed to the labor of convicts being let to contractors. We believe that the ultimate solution of the problem will come when the convicts are engaged in the widest possible diversity of industry by hand labor for the use of eleemosynary institutions. By this both body and mind will be strengthened."

These two statements seem to have expressed labor's attitude so well that they were both incorporated in Mr. Gomper's report submitted to the Rochester Convention of the American Federation of Labor in 1912.¹⁴

In 1914, the unions were urged by the American Federation of Labor to have placed in the state constitutions the following: "The sales of the products of convict labor, or the contracting or hiring convicts to perform labor, by any officer of the state, is hereby prohibited; but this shall not prevent the authorized officers of the state to employ convict labor to furnish products for the eleemosynary institutions of the state or the political divisions thereof, or the construction of state public roads, or the preparation of material thereof."

The convention of 1916 of the American Federation of Labor reported upon a survey that had been made and claimed credit for the laws that had been enacted in regard to prison reforms. Contract convict labor has been abolished in California, Illinois, Iowa, Mas-

¹³*American Federation of Labor History*, Encyclopedia Reference Book, American Federation of Labor, Washington, D. C., pp. 185-188, 1921.

¹⁴Tracy, *The Trade Unions' Attitude toward Prison Labor*, Annals of the American Academy of Political and Social Science, Vol. XLVI (March, 1913), p. 137.

sachusetts, Minnesota, Mississippi, Missouri, Nevada, New Jersey, New Mexico, Ohio, Pennsylvania, Texas, Utah, Vermont, Washington, and Wisconsin. It also urged that the public account system should be confined within the borders of the state, and that instead of the state taking the profits, the profits should be turned over to the dependents where there were dependents and if no dependents to be saved for the convict upon his release. This would relieve all competition with free labor, or at least, all unfair competition. Then, too, it would have the effect of helping to unite the home which had been broken during the prisoner's incarceration.¹⁵

The American Federation of Labor is committed to a perennial effort to induce Congress to pass a law barring from shipment in the channels of interstate commerce all convict goods manufactured and destined for the competitive market. There is also a continuous effort to secure the enactment of uniform state laws in the direction of the state use system. There seems to prevail the feeling that this system will prove to be satisfactory both to labor and to the state.¹⁶

Mr. John P. Frey, Editor, "International Molders' Journal," Cincinnati, Ohio, says: "Briefly stated the trade-union attitude toward prison labor is that its first object should be the prisoner's reformation, that under no circumstances should any element of private profit enter into consideration, that the labor performed by the prisoner should be of a useful nature, and that for this labor the convict should be paid for the benefit of those dependent upon him and for his own assistance upon regaining freedom, and finally that the principal object of the state should be to protect itself from the vicious and unfortunate, to give them an adequate opportunity for reformation but not to derive profit from their labor."¹⁷

The efforts of labor unions against the prison methods of convict labor that have been used in the past have been persistent, relentless, and on the whole, remarkably effective.

We shall conclude our presentation of labor's attitude toward convict labor with the following quotation from an authoritative student of the subject involved: "The adoption of the recent methods of employing convicts is the outcome of a century of endeavor of citizen mechanics to secure freedom from the menacing competition of prison

¹⁵*American Federation of Labor History*, Encyclopedia Reference Book, pp. 185-188.

¹⁶*Proceedings of the Annual Convention of the American Federation of Labor* (1921), pp. 132, 133.

¹⁷Tracy, *The Trade Unions' Attitude toward Prison Labor*, *Annals of the American Academy of Political and Social Science*, Vol. XLVI (March, 1913), p. 137.

labor. This competition was brought on (1) by the development of our penitentiary system whereby compulsory labor was made a means of punishment and reformation, thus creating a large potential supply of prison labor and whereby convicts sentenced to such labor were concentrated in relatively few occupations within narrow markets, and (2) by the development of the factory method of production, which resulted in the division of classes and functions, shifted the burden of competition to the laborer and made low-plane producers a menace to the standard of living of the higher plane workman. Convict labor is such a menace in competition and is objectionable on moral and economic grounds. To remedy these evils labor unions have striven for various restrictive and regulative measures and have turned to political activities to obtain their demands. By this political program legislation has been effected abolishing the system of private control and adopting public control, and in an increasing measure, public use of convict labor. By this triumph of social control, the prisoner is protected against exploitation and the citizen mechanic against unequal and unfair competition."¹⁸

We now turn our attention to the manufacturers. They, like free labor, have persistently and doggedly protested against the prison labor policies.

The consideration that has been the most important in determining prison labor policies in the past is competition with free industry. From the earliest times employers and employees have objected to convict labor on the ground that it was unfair competition. It has been frequently assumed that the objections came entirely from trade unions, but this is decidedly fallacious.¹⁹

Since the origin of prison labor in the United States, efforts have been made by employers to restrict the competition by such methods as stamping the goods "prison-made," diversification of prison industries, prohibition of power machinery in prison industries, restriction of interstate marketing of prison-made goods, exportation of prison-made goods, reduction of hours of prisoners, requirement that prison-made goods be sold at a price not less than the market price, and various other laws or projects.²⁰

In 1886, a large group of manufacturers and others met in Chicago and organized the National Anti-Contract Association. Its ob-

¹⁸Hiller, *Labor Unionism and Convict Labor*, Journal of Criminal Law and Criminology, Vol. V (March, 1915), p. 879.

¹⁹*Establishment of Convict Labor System in Utah*, Monthly Labor Review, Vol. XIX (August, 1924), pp. 176ff; *Convict Labor, Twentieth Annual Report of the Commissioner of Labor*, Washington, D. C. (1906), pp. 49-172.

²⁰Sutherland, *Criminology*, p. 458.

ject was to be "the thorough investigation of the subject of convict labor, for the purpose of discovering and securing the adoption of that method of employing the prison population in the various states which shall be the least burdensome to all labor and least oppressive to manufacturing interests—all proper conditions considered."²¹

The organization also demanded the enactment of a law by congress to prohibit the sale of prison-made products outside the state in which manufactured; the withdrawal of federal prisoners from state prisons; and the prohibition of purchase by the federal government of any product of prison labor. They appointed a committee to formulate a plan of employment which would obviate the evils of the contract and lease systems, and advised their executive committee to appear before the legislature of the various states and carry forward the attack against current systems.²²

The significance of the desire to bar prison-made goods from sale outside the state in which manufactured is clear. For if labor and employers succeed in securing the abolition of competition within a certain state, what would be gained provided a flood of the same kind of goods could be placed on the open market, shipped in from near by states whose legislatures had proved recalcitrant and refused to accede? The efforts of the manufacturers' association brought to focus the united opposition of the prison wardens and contractors of the country. They succeeded in effectually blocking any action of Congress on the above proposals.

Congress did nothing regarding the situation except to order the commissioner of labor, Carroll D. Wright, to make an exhaustive study of convict labor. This was done in 1886, and the report was published the following year as the Second Annual Report of the Commissioner of Labor.

The commissioner concluded that in the aggregate the competition, which amounted to about one convict to 300 free workmen in productive industries, was insignificant. However, the conclusion reached by the commissioner was that locally and in specific industries the competition might be serious to the point of disaster. To substantiate this conclusion the report used the result of a study made by Colonel John S. Lord, Secretary of the Illinois Bureau of Labor Statistics.

²¹*Second Annual Report of the Commissioner of Labor* (1886), p. 366, Washington, D. C.

²²Mohler, *Convict Labor Policies*, *Journal of Criminal Law and Criminology*, Vol. XV (1924-1925), pp. 569-570.

The study dealt with the provision cooperage for the Chicago market. Private contractors at the Illinois penitentiary and the Northern Indiana penitentiary were producing this cooperage. The statistics of their production for eleven years, 1875-1885, were studied and compared with those of free shops for the same market. The prison contractors during this time furnished 67.8 per cent of the total product placed on the market. Their output rose 360 per cent in volume; the output of the free shops rose only 31 per cent. The enormous growth of the meat packing industry, requiring pork barrels, and lard tierces, caused a rapid increase in the market for these articles. The increase was chiefly absorbed by the prison output.

The prices of provision cooperage declined during the period, and wages fell so low that a man could make more in street work of any sort than in the business in which he had become efficient.

There is evidence to show that the prices of a barrel fell as low as 85 cents in 1888. The coopers, to escape unemployment, worked for as low as 12½ cents a barrel, at which rate they were not able to earn more than a dollar a day. Soon after this most of the cooperge plants in Chicago closed. In 1890 there were 22 plants making some wood-bound work, though but 10 made exclusively the kind of packages made in prisons. These 22 employing coopers petitioned the governor of Illinois in 1890 as follows:

"We, the undersigned manufacturers of cooperage at Chicago urgently request that you investigate the conditions of our industry and give us prompt relief from the ruinous competition of convict labor as carried on at the Illinois State Penitentiary at Joliet."

As a result of this competition the manufacturers of Chicago sold their plants or changed them to another form of industry.

The testimony of manufacturers of boots and shoes, clothing, work shirts, pants and overalls, chairs, and in fact nearly all goods that have to meet competition with prison-made goods testify to the fact that manufacturers are unable to compete in the open market with prison-made goods.²³

A case of recent development in opposition to prison-made goods is that of Utah. The constitution of the State of Utah directs the legislature to prohibit the contracting of convict labor and the employment of convicts outside the prison except on work in the direct control of the state. The prison board has the power to determine

²³*Second Annual Report of the Commissioner of Labor* (1886), pp. 373-378; *Twentieth Annual Report of the Commissioner of Labor* (1906), pp. 151-161.

the line of work to be pursued, selecting such as will interfere the least with that carried on by citizens of the state.

In 1923, the Board of Correction entered into an agreement with the Pioneer Government Manufacturing Company, whereby the state was to furnish floor space, and such other facilities as were necessary; the company was to furnish machinery and raw material. The state was to make work shirts and overalls. The work shirts and overalls, except those needed by the prison and other state institutions, were to be sold to the manufacturing company. The surplus could not be sold to other than said manufacturing company without written permit of the manufacturing company.

The manufacturing association brought suit, maintaining that the contract was in violation of the law. The Supreme Court so decided and declared the contract void.

The Board of Correction then proposed to equip the institution with machinery at a cost of \$25,000 and manufacture the shirts and overalls. A writ of prohibition against the board was issued to prevent it from carrying out its intentions. The court decided in favor of the board, and thus manufacturing has been established in Utah.²⁴

With labor conditions so materially different in prison factories from conditions in factories employing free labor it is evident that conflicts must arise when the products of these two types of factories meet in competition in the open market.

In a study made by the United States Department of Labor an opportunity was given the manufacturers who employ free labor to present such evidence as they desired to give concerning the effects of competition on their sales. The evidence submitted is *exparte* and in part circumstantial but it expresses the sentiment of free labor employers.

A number of factories engaged in making high-grade aprons were visited. These goods are not in direct competition with prison-made goods, but the manufacturers uniformly complain that the artificially low price of the "low end" stuff forces the market value of the better grade goods below normal.

An Illinois manufacturer of aprons stated that because of prison competition his production had dropped from 89,450 dozen in 1916 to 46,142 dozen in 1922, and that competition had been felt most in the last two or three years.

While the manufacturers of Illinois date their serious competi-

²⁴*Establishment of Convict Labor System in Utah*, Monthly Labor Review, Vol. XIX (August, 1924), pp. 176ff.

tion with prison-made goods back to 1920, most of the Ohio producers seem to feel that it is only since the first months of 1923 that they have been vitally affected.

A New York producer of aprons said, "Last week I shipped goods to an old customer for a sale at an actual loss, and today I am making a shipment at a loss of \$1 on the dozen, and at that I won't pay the salesman any commission. But this is an old customer and I must keep her trade. She wants to hold a sale and I must furnish her with the goods. I have tried having the goods made up in the country and in the small towns where there were no manufacturers, but in this I have failed. I am unable to meet prison competition."

A manufacturer of work shirts reported that in 1922 he had made 120,128 dozen. In the first nine months of 1923 he made only 58,253 dozen. He said that he was unable to prove that prison competition was the cause of this reduction, but he knew it was the chief factor.

Statements were given by manufacturers of bungalow aprons and women's house dresses, work shirts and overalls, binder twines, boots and shoes, stoves, hollow ware, fiber furniture, wooden chairs, and brooms. They were unanimous in their evidence that they were unable to meet prison competition.

An outside manufacturer selling his goods in competition with the goods of other outside manufacturers and with convict-made goods as well may see his business shrinking and he may realize that convict goods are underselling his goods. A mathematical measure of his loss actually due to competition with convict goods is, however, difficult of measurement because of the other factors that may affect the market, including, possibly, his own lack of management or of business judgment.

The great cause of complaint is that prison contractors get their labor cheaper than free labor employers do and because of this lower item of production cost the prison contractors can and do undersell them. Further, it is charged that contractors of prison labor get shop room, power, heat, and light free or at a nominal cost.

Another complaint is that the state itself under the public account system may produce goods and sell them under terms of ruinous competition. The state has the prisoners and if the prison industries do not support the prisoners then the tax payers must. The prison can thus make and sell goods without having to pay a free labor wage and the prison must do business regardless of selling price. Some taxpayers become incensed when they see the state using

their taxes to maintain a penal institution with a manufacturing plant therein that demoralizes or destroys the tax payer's trade. On the other hand, some industries, as, for instance, the manufacture of binding twines, are conducted by prisons because of the insistent demand of large groups of taxpayers.

A third complaint is that convict labor may be concentrated, not only on a particular article, but on a particular kind of article, to such an extent that the prison article completely dominates the market. Were convict labor limited to the production of articles in which prices are governed by a world market, like wheat or cotton, there undoubtedly would be no complaint of convict labor competition. It is not the matter of volume that counts so much in competition as the specialization of the particular type of article.²⁵

The Commissioner of Labor, Charles P. Neil, in his report in 1906 summarizes the attitude of manufacturing associations as follows: "Reviewing the general question of convict labor as a competitive factor, it may be said that manufacturers consider competition unfair and ruinous, demoralizing to markets and business stability, compelling the reduction of prices below a fair margin of profit and often even below the cost of production. Wages are forced to the lowest limit in a vain effort to lower the cost of production to that of the prison contractor. In some cases a deterioration of quality of material used and in others an entire abandonment to the prisons of the manufacture of certain grades of goods have become necessary."²⁶

CHAPTER IV

CONCLUSIONS

In 1885, 26 per cent of all the convicts employed in productive labor were working under the lease system; in 1895, 19 per cent; in 1905, 9 per cent; in 1914, 4 per cent; and in 1923 it disappeared. This system as we look at it seems little more than legalized slavery, and even when in use it was excused only by a plea that the states were too poor to build, equip, and maintain prisons and prison workshops.

A survey of prison labor also shows a reduction in the use of the contract system from 40 per cent of all the convicts employed in 1885 to 12 per cent in 1923. The piece-price system has not

²⁵*Convict Labor*, United States Bureau of Labor, Washington, D. C., Bulletin 372, 1923, pp. 107-166.

²⁶*Twentieth Annual Report of the Commissioner of Labor*, 1906, p. 25.

changed so materially, and has been of rather small importance so far as numbers are concerned. If we combine the contract and piece-price systems, which do not differ greatly in effect, 48 per cent of all the convicts at work came under these two systems in 1885, whereas only 19 per cent of those employed came under the system in 1923.

During the same period extensive growth appears in the state-use systems. Collectively, the public account, state-use, and public works and ways systems increased from 26 per cent of all convicts employed at productive labor in 1885 to 81 per cent in 1923.

Our attention, however, is called to another phase of convict labor which is not so promising. In 1885, 75 per cent of all the convicts in the various institutions were employed at productive labor, while in 1923 only 61 per cent of all the convicts were employed in such labor.¹

Certain principles have been pretty generally agreed upon that will operate for improvement in our prison systems. Some of the more important principles are the following:

1. Prisoners should be regularly employed at productive labor and no convict worked beyond his capacity.

2. Prisons should be put on a paying basis by securing the best types of business managers; but the prison must not be made to pay at the expense of the reformatory motive.

3. Some plan for the payment of wages, as an incentive to more efficient work, and as an encouragement of reformatory motives for the building up of self-respect, and for the support of dependents, must be worked out.

4. The employment should be of varied types, offering the prisoner a choice based upon intelligence, education, and degree of skill and responsibility and the demand for the work. This would apply to outdoor labor as well as to indoor labor.

5. Competition with free labor should be reduced to the minimum.

6. Prison-made goods should be standardized, and unfair competition with taxpaying manufacturers should be abolished.

7. Private control of and profits from convicts should be abolished.

The above principles, if carried out in our prison policies cannot fail to bring improvement.

A problem that has long been in solution and is still unsettled is: Shall the prison be made to pay? Donald Lowrie says: "There

¹Convict Labor, United States Bureau of Labor, Bulletin 372 (1923), p. 18.

are nearly 2,000 men confined at San Quentin, 1,800 of whom are able bodied, capable of discharging a good day's labor. 1,800 able bodied men should support a community of 8,000 or 10,000 persons in comfort and plenty. Yet the 1,800 able bodied convicts fed on the coarsest food, clothed in the cheapest manner, and housed like dogs cost the state of California an average of \$200,000 a year to keep them in prison.²

A recent writer states that with 75,000 mostly unskilled workers, yet able bodied, with 135,000 acres of land worth \$30,000,000, with buildings, industrial and non-industrial, valued at \$65,000,000, and with \$4,000,000 worth of machinery and tools penal institutions should at least break even; but, instead, for the last thirty years the state and Federal Governments have been sinking money at the rate of from \$7,500,000 to \$10,000,000 a year.³

In answer to the above statement another writer replies that a large number of the prison population consists of custodial rather than punitive cases. "Examinations made in various prisons and reformatories estimated from 15 per cent to 25 per cent of the prison population as segregable on account of mental deficiency. These figures, taken in connection with the fact that the same report states that 87 per cent of the felons admitted to the prisons in 1917 had served previous terms, make obvious the fact that a large percentage of those who are released are incapable either from certain mental defects or from lack of training in the institutions of maintaining themselves in society." It is believed before any great advance can be made it will be necessary to segregate those prisoners that are incapable of taking training. The profit motive and reformatory motives do not necessarily go together, but there is no good reason for stating that because the motive of an institution is primarily reformatory that it should not also pay at least the running expenses.

The committee making the New York survey believes that prisons can be made to pay. The amount of work necessary to train men for useful industry is not great, if those in charge of their occupation have the educational purpose in view. Occupations in a prison may have vocational value, if the officials in charge keep the training purpose in mind. The answer is in the selection of the prison

²Donald Lowrie, *My Life in Prison*, p. 64, New York and London, Mitchell Kinnerley, 1912.

³Bryant Smith, *Efficiency vs. Reform in Prison Administration*, Journal of Criminal Law and Criminology, Vol. XI (May-February, 1920-1921), p. 587.

officials. Good business management and training must go hand in hand.⁴

The object of putting the criminal in prison is two-fold: to exert a deterrent influence on others to abstain from crime and to bring about the reformation of the prisoner. To this end it is important that sure and swift punishment be meted out. Revenge, torture, and brutality must be abandoned. These are barbarities that civilization must give up, and besides it has been proved that these measures do not decrease crime.

What kind of work shall these convicts do? During the war there was \$2,000,000 spent in testing the kinds of work each man was best adapted to. This expense and material collected should be utilized, and there is no place where it can be used to a greater advantage than in our state and county prisons.

If a man is bright and skilled in a trade he should not be put to washing dishes just because there is a vacant place in the kitchen. Neither should the man who has wealth and is able to spend money in prison have an easy place. But each man should be put at the kind of task that will call for the exertion of his best ability. The big job is to fit a man into the right place, and to keep him happy in his work. The psychologists have made a start in trade testing that in the future may prove of great worth in solving this problem.

The placing of a man in the right kind of vocation or trade will enable him to take his place in the world. The disciplinary value of occupational assignment comes from the training which it gives a man in persistent, careful, and responsible work. Many of our prisoners have never done an honest day's work, or have never stuck at one job for any serious length of time, or have never reached the stage of accuracy, care, and trustworthiness that would enable them to obtain remunerative employment. To impart trustworthiness is a definite duty in any form of industrial training. Inducement should be offered to keep a man from shirking, to increase his accuracy, to make him more careful of his tools and waste material, and more conscientious in his effort and the use of his time. Unless a man gets from his occupational assignments a definite respect and desire for conscientious labor, his industrial labor, his industrial training, cannot be said to be a complete success.

New Jersey has undertaken just such a program. The first step taken was to make a survey of the prison to determine the present

⁴*Report of the Prison Survey Committee of the State of New York, Albany (1920), p. 104.*

status of the work; the next was to repair or to remodel the old prison in order to adapt it to a greater variety of work. Then a survey of the prison population was made so as to decide what kind of work each man was best adapted to. This was done by the army group tests the purpose of which was to determine the intelligence and education. Then a survey was made to find the extent of the market. After these steps were taken the prison authorities were in a position to make assignments to each individual, based upon his intelligence, his education, his degree of skill, his responsibility, and the demand for a particular task. Each must then be encouraged to do his best. Often, it would seem, the only incentive to doing one's best is to pay him for what he does.

Mr. T. M. Osborne, speaking upon this subject, has said: "Men are assigned to jobs entirely without regard to their preference or capacity; they are kept at the unattractive tasks by fear of punishment; they receive no return for their labor (the cent and a half a day graciously allowed by the state of New York is a joke). Such labor is mere slavery; and slave labor has always been insufficient and always will be. It is hopeless to expect men to do good work unless they can see some advantage to themselves in doing it. Men outside of prison are not, as a rule, affected with what Kipling calls 'a morbid passion for work'; and human nature prevails inside the prison in this respect if in no other."⁵

If we take the ethical side there are good reasons why wages should not be paid to the prisoner. First of these is the large overhead cost of crime to the state. It is hard to estimate the cost of crime to the state, but the very fact that nearly all prisons are run at a loss is evidence of this cost. Since this is true it seems only just that the state should appropriate all profits derived from prison labor. On the other hand it may be urged that society is to blame for crime. It has failed to train the individual for citizenship and has no one to blame but itself, therefore, to exploit the labor of this class, having made it what it is, is rank injustice. Further, even though the indebtedness of the criminal to the state is admitted, it would be better to pay wages, not merely because it would be a more business-like way of settling the account, but because by such a plan the criminal would be made to realize more fully the consequence of his crime. It is also pointed out that the reason prisons are not able to pay wages is because of poor management.

⁵Thomas Mott Osborne, *Prison and Common Sense*, The Atlantic Monthly, Vol. CXXXII (September, 1923), p. 371.

Australia and Germany pay wages, not because they believe the prisoner has any part or voice in the matter, but because it helps to solve the problem of discipline.

The compensation of convicts while incarcerated is a problem which prison boards and state authorities are coming to view with great seriousness. To some extent compensation is a matter of incentive to the convict toward good work and better behavior, but it is of greater importance that the convict's family be cared for. A convict with a conscience wants to provide for his family, and a convict without concern should be made to care for his family. But, of course, it is nonsense to put a man in prison for non-support of his family, and then deprive him of all means of supporting them.

Many prisons are now paying a wage. The states are gradually recognizing the advantage of paying wages. Great impetus was given by the executive order, issued by President Woodrow Wilson in 1918, which made it possible for war supplies to be manufactured in the prisons provided all contracts were made directly with the prison authorities and which stated that "compensation and hours of labor for inmates of any institution above specified, shall be based upon the standard hours and wages prevailing in the vicinity in which the institution is located. The pro rate cost of maintaining the inmates so employed shall be deducted from their compensation."

Under the provision of this executive order the state of New Jersey secured a contract from the Reclamation Division of the army and until that division was closed, two hundred prisoners in the New Jersey State prison repaired army shoes. At the termination of the contract the prisoners received checks from the United States treasurer for their work. After paying back to the state of New Jersey the cost of their keep they had a worth-while balance for themselves or their families. The war emergency proved the practicability of wages to prisoners, and the public mind is rapidly becoming convinced that it is not only right but necessary.⁶

According to the 1923 report of the United States Bureau of Labor on convict labor out of 104 institutions reporting, 53 were not paying a wage. Those paying a wage reported as follows: Considering the minimum compensation as a basis, convicts in 31 institutions were paid 10 cents or less a day. In 7 institutions including one federal prison, in which only those engaged in manufacturing were paid, convicts were paid over 10 cents and under 20 cents a

⁶Adolph Lewisohn, *Prison and Prison Labor*, Century, Vol. CVI (July, 1923), pp. 401, 402.

day. In 11 institutions the convicts received 20 cents or more a day. In one institution the convicts received the free labor wage rate after the completion of a task and in one a bonus was paid for over-task work. In most instances where contractors were concerned over-task work was compensated at the rate paid to the institution for the hire of the inmates. Certain institutions reported rates varying from 20 cents a day to \$1.50 a day and even higher for over-task work.⁷

Assuming that ethical and practical reason for the payment of wages to prisoners are sufficient to justify it, the question arises, What shall be the basis of payment? Some would pay the prisoner what he earns, but it is not easy to determine this amount. No one has as yet figured out what it is.

Some have suggested that the plan used at the George Junior Republic might be used with adults. The plan there is very simple. The prisoner is paid a certain wage; then from that wage is deducted the expense of board, room, clothing, and expense of his keep. Nothing is given him. He must pay for everything he receives. This plan has been adopted by California for those working on the road.⁸

A report taken from L. D. Weyland's "Study of Wage payment of Prisoners as a Penal Method" sums up the arguments against the payment of wages to convicts as follows:

1. Criminals are a heavy burden to the state. The cost of arrest, court procedures, and custodial care is enormous.
2. Penal institutions are not self-supporting even penal farms are not self-supporting in many cases, as in Massachusetts each convict costs the state \$4.50 a week over and above his earnings. Kentucky reported a deficit of \$38,316.33 in 1910.
3. The payment of wages is unconstitutional. Kentucky and Texas have so decided, Kentucky on the method of payment, while Texas on the grounds that it was unconstitutional to pay out state money without service rendered to the state.
4. To put money into the hands of the convict is the worst thing that can be done. The state agent of the Minnesota State prison declares that more harm has been done to the convict of Minnesota than good received. State money has been squandered.

The same report sums up the arguments for payment of wages to convicts as follows:

⁷*Convict Labor*, United States Bureau of Labor, Bulletin 372 (1923), pp. 15, 16.

⁸Adolph Lewisohn, *Prison and Prison Labor*, Century, Vol. CVI (July, 1923), pp. 399-404.

1. The law provides for the deprivation of the convict's liberty alone, and not his labor. The cost of maintenance alone should be charged against him. If he does not receive wages he is being exploited and the state is setting an example of being a thief.

2. In answer to the statement that prisoners are non-self-supporting it is pointed out that many are self-supporting. The Kentucky penitentiary in 1911 reported a surplus of over \$30,000 besides making improvements of more than \$40,000. The Maryland penitentiary, 1912, showed earnings of \$141,000 besides \$33,000 paid to prisoners for over-time work. Kansas prison saved the state over \$500,000 in 1913. Minnesota has been very successful. The Iowa prison, which pays wages, is, according to the warden, self-supporting. A number of the states where road building has been engaged in, report an income above expenses.

3. Payment of wage is an effective means of rehabilitation, creates self-respect, and prepares a way to fit the convict into society upon release.

4. The practice makes easy discipline. The attitude of the prisoner toward the prison is changed. The warden of the prison in Michigan testifies that the discipline had been greatly improved by the adoption of this system.

5. It helps maintain family ties. The fact that money is sent home, makes the convict's reception more cordial when he returns.

6. The payment of wages to convicts increases industrial efficiency.

7. The payment of wages to the prisoner helps him to make restitution to those whom he had injured.

8. The payment of wages would remove the objection of free labor to convict labor.

On the whole we would conclude that prisons should be so managed that a wage may be paid to all those who are capable of work. The possibility of compensation is a question of the management of the prison. Either it must be managed as any other great industry or a heavier burden must be placed upon taxpayers if wages are to be paid. But if paying a wage to a convict gives him an incentive that will help him to reform and fit him to go back into society, then some way must be found to compensate him for his labor.⁹

Education of the prisoner has never received a great deal of

⁹L. D. Weyland, *A Study of Wage Payment to Prisoners as a Penal Method*, Journal of Criminal Law and Criminology, Vol. X, February (1920), pp. 558-570; Gillin, *Criminology and Penology*, pp. 467-471.

attention. What little has been done is of very poor sort. The task of educating the convict is a most difficult one. The Prison Survey Committee of New York reported that on leaving school 2 per cent of those in prison had been in advance of normal grade for their age, approximately 20 per cent were normal, and approximately 75 per cent were retarded by one year or more.¹⁰ Taking the survey as a basis, evidently there are many in prison who are incapable of acquiring an education other than vocational.

Illiteracy is productive of ignorant as well as wilful law violation. This is evidenced by the fact that 50 per cent of the inmates of some of our state penitentiaries are illiterate. The government, Federal and State is coming more and more to recognize the importance of education. Many of our state penitentiaries are seeking to eliminate illiteracy and at the same time to give the inmates an industrial training best suited to their individual needs.¹¹ If a man is to receive the right kind of training, placing him in the right kind of a job is of the greatest importance.

Many a convict as he enters the prison is for the first time introduced to real work. If the purpose of a prison sentence is merely punitive, then it makes no difference what kind of work the convict is assigned, but if the purpose is to fit him for a safe and useful citizenship, then the training is of the utmost importance. Every man so far as possible should be trained to take his place in life and should be able to make an honest living after his release. If his training fails in these respects then his vocational training in prison has failed.

The subject of proper industrial training as a means of rehabilitation should receive careful consideration by legislators, prison boards, and prison officials.

No prison policy of convict labor can overlook the responsibility of the after care of the convict. It should be clear to every inmate before he leaves the institution that a person on parole is still under authority, on trial in the community, before being completely restored to it; that there are necessary restrictions upon his freedom. Parole is a test of his purpose. Does he intend to use his ultimate freedom rightly? It must further be made clear to him that he is assuming obligations to live up to certain requirements and standards as pointed out by the American Prison Association.

¹⁰*Report of the Prison Survey Committee, State of New York, Albany, (1920), p. 225.*

¹¹*Convict Labor, United States Bureau of Labor, Bulletin 372, 1923, p. 16.*

There should be a continuation of training outside the institution; a friendly oversight and guidance; the providing of suitable work which the individual can do and likes to do; continued supervision of his health; continued educational opportunities to encourage self-improvement and to stimulate ambition; continued industrial opportunities to make the individual more and more independent, and therefore to bring about more complete adjustment in the community; protection of the paroled from exploitation, so that he may have a chance to make good.

Society, too, must be protected. If the paroled man fails to make good, or threatens the welfare of the community then he must be returned to the prison.

Prison labor cannot be divorced from the after-care of the released criminal. They are constituent parts of the prison policy which aims at rehabilitation.

In conclusion the tendencies of prison labor might be summarized as follows:

The lease system has virtually disappeared; the contract system is becoming less important; the state-use system has grown in favor both with penologists and labor unions; collectively the public account, and public works and ways systems have increased in importance; the reformative idea is more prominent; the tendencies toward wage payment are greater; the attitude of organized labor and manufacturing associations toward prison labor is improved; the after-care of prisoners is demanding more attention; legislators, prison authorities and the public are considering vocational education as of vital importance.

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