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ONE HUNDRED YEARS OF CRIMINOLOGICAL DEVELOPMENT IN ILLINOIS

ANDREW A. BRUCE¹

Since the year 1833, which is the beginning of the century that we are chronicling, we find a steady growth of humanitarianism in the American criminal law and in its administration, though that humanitarianism has not always been scientific, consistent or even intelligent. What is true of the United States as a whole is true also of Illinois. No American state has been without its forebears. In the history and development of Illinois are to be found the influences of many inheritances and of many traditions.

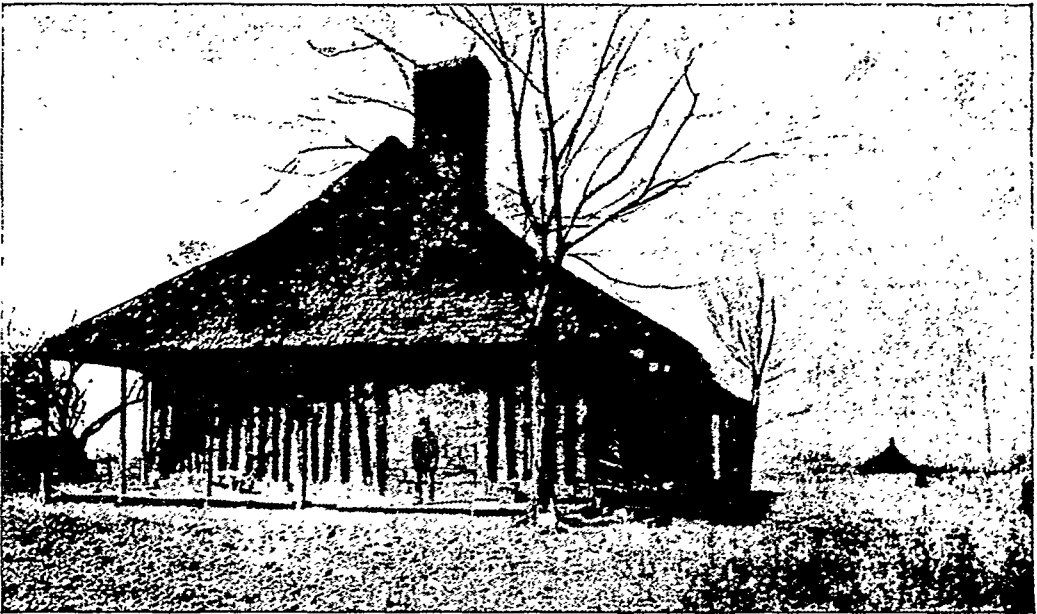
Illinois Under the French

As far as the white man is concerned, the history of the state or territory started in 1718 when colonists were sent out from France and the Fort of Kaskaskia was erected in its southern portion. If any law was known during the French occupancy other than that of the military officers and of the clergy and the law of self-help of the frontier, it was the French Law of the so-called Customs of Paris which antedated the French Revolution. In that law corporal punishment was the underlying principle, and imprisonment, except for purposes of the complete concealment of political prisoners, was little used; quartering, the pillory, the rack, flogging for the least important offenses, all manner of bodily mutilation and death often following torture were its only methods of crime repression. This control, however, was only of short duration and, as the French population was small in number and became much scattered after the British occupation, its influence and tradition could have been of but slight importance.

The British Occupation of Illinois and the Later American Conquest

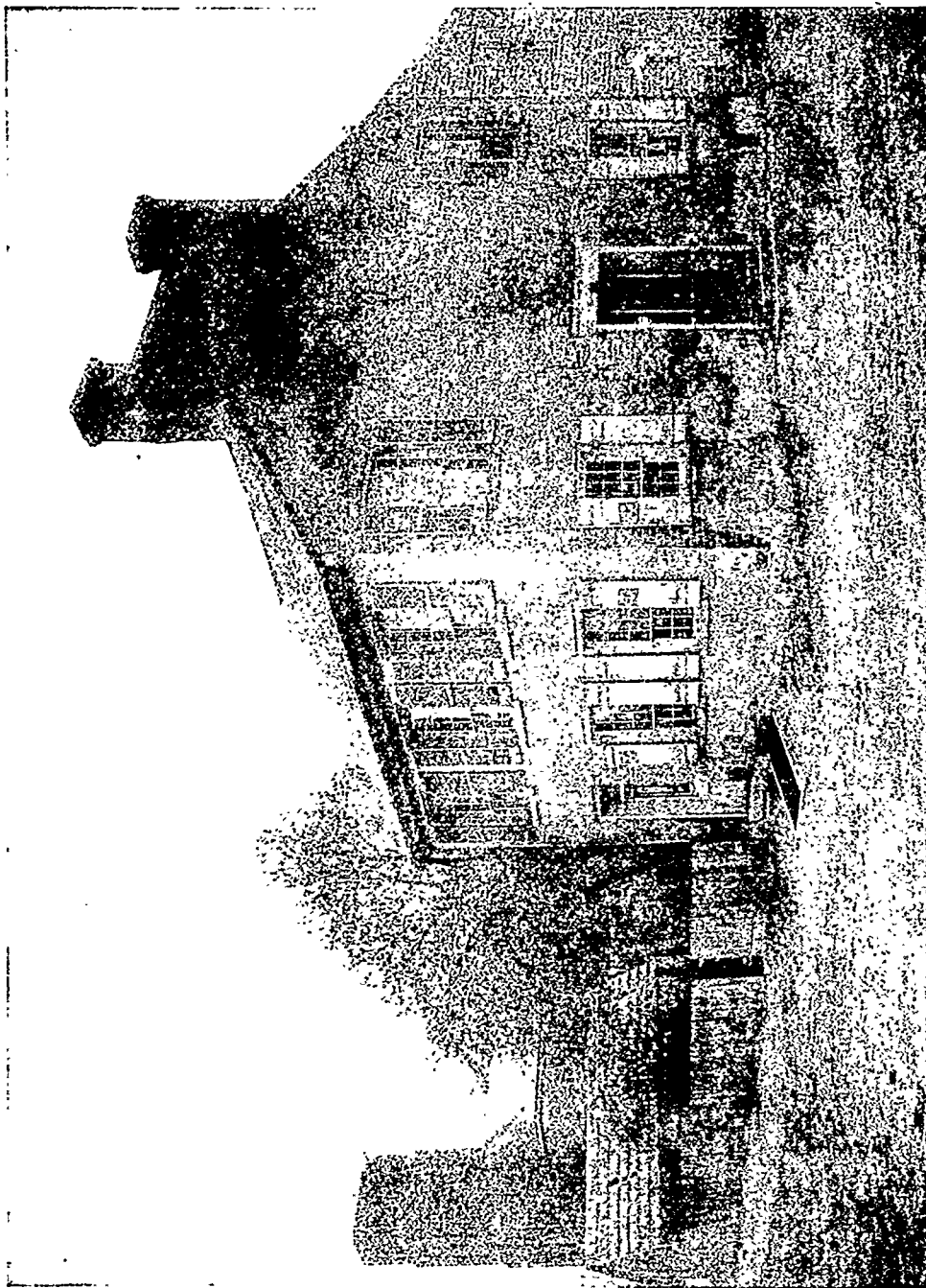
Then, and in 1763, followed the Treaty of Paris under which the Illinois country or territory passed to Great Britain. Even this control, however, was brief, since during the Revolutionary War George Rogers Clark, under a commission from Patrick Henry, the then Governor of Virginia, captured Kaskaskia and soon obtained

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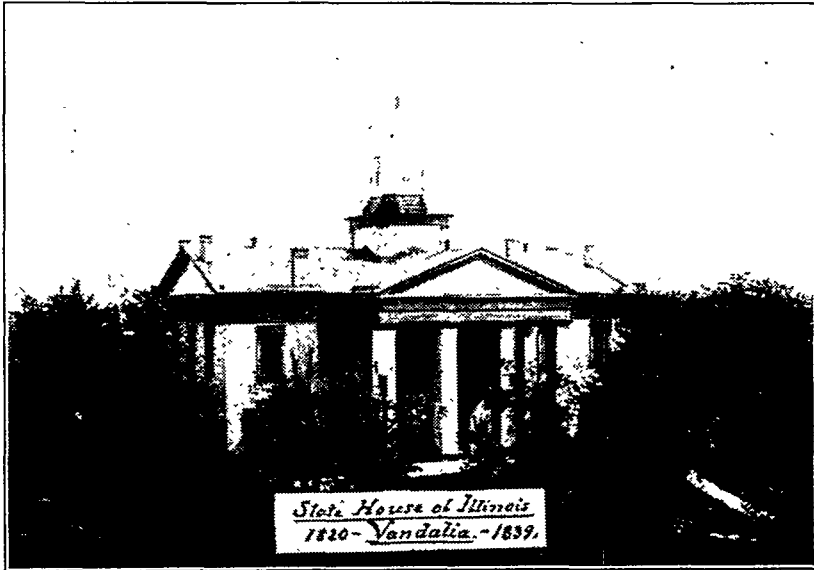


First Court House in Illinois. Erected by Col. George Rogers Clark at Cahokia during the Revolutionary War. Courtesy of the Lewis Publishing Co., Chicago.

control of the entire territory. Then, and in 1783, Great Britain ceded the district to the United States and in 1784 Virginia concurred in this session and relinquished all of her rights and control. In 1787, therefore, Illinois became subject to the provisions of the Northwest Ordinance. In 1800 the Territory of Illinois, together with that which now comprises the State of Indiana, was organized by Congress into the so-called "Indian Territory," and its seat of government was located at Vincennes, Indiana. This situation continued until February, 1809, when a division was effected and the area which now constitutes the State of Illinois was organized into a separate Territory and its capital again located at Kaskaskia. In 1818 the state was admitted into the Union, its population at that time being about 40,000 and being chiefly composed of settlers from the other states, most of whom were frontiersmen who partly from choice and partly from necessity used and valued the rifle as much as they did the plow and the distaff. From that time, however, a much more permanent wave of emigration swept in, that to the northern portion of the state coming from the northern and free and that to the southern portion coming from the southern and slave-holding states. Until



State House at Kaskaskia. Capitol of Illinois Territory from 1809 to 1818. First state legislature met in this building. From Dunne's History of Illinois.



Courtesy of the Chicago Historical Society.

after the time of the Civil War, however, by far the greater part of that emigration was drawn from the native American stock. Since that time, and especially in the city of Chicago, it has been chiefly of foreign origin, and since 1890, it has come largely from southeastern Europe. In spite of its cosmopolitan population, however, the controlling thought and influence of Illinois has been largely Anglo-Saxon, and generally speaking it may be said that the history and evolution of the state has been but a part of the history and evolution of the United States as a whole and that the philosophy and thought of that whole has largely influenced its social and economic growth and development.

With the exception of Pennsylvania, and at the time of the Revolution even in Pennsylvania itself, the criminal codes and the criminal administration of the American colonies were based on those of England and were noted for their unreasonableness and for their severity. Though capital punishment was not as common as in the mother country, the pillory, the stocks and lash were the usual methods of punishment. The penitentiary was unknown and the jail was little used save for the detention of debtors and of persons awaiting trial.

The Criminal Law of the Colonies

The laws of the Duke of York, which were compiled and promulgated in 1676 and made applicable to all of the territory which had been acquired from the Dutch, imposed the penalty of death on those who denied the true God and his attributes, who committed willful and premeditated murder, who had intercourse with a beast, who committed the crimes of sodomy or of rape, who bore false witness on purpose to take away a man's life or committed acts of treason. A child above the age of sixteen years who struck his father or mother could be put to death and the same penalty was meted out to burglars and robbers for the third offense. Fornication was punished by fine and corporal punishment; forgery by the pillory and double damages; excessive drinking by fine or stocks or both; lying and spreading false news by fine, whipping and the stocks. The penalty for arson was death or full satisfaction at the discretion of the court. For the first offense the crimes of burglary and robbery were punished by branding; the second by branding and whipping and the third by death. Adultery was punished by corporal punishment, fine or imprisonment.

The Criminology of the Northwest Ordinance

Similar and even severer codes remained in existence long after the Revolution and were carried into the territories and the states that were created from them. Though, indeed, the North West Ordinance of 1787 prohibited slavery and provided that schools and education should ever be encouraged, the criminal laws and orders made applicable to the Territory authorized the erection of whipping posts in each county, made flogging both for men and women the customary penalty for crime, and provided for capital punishment in cases of treason, murder, rape, arson, and horse stealing upon a second conviction. In spite of the prohibition of slavery a territorial act or order provided that "in all cases of penalties where free persons are punishable by fines, servants shall be punished by whipping at the rate of twenty lashes for each \$8.00; and another equally inhuman enactment of the same year provided that vagrants who *could not* (not would not) obtain an employer who would furnish them with food and clothes should suffer a penalty of not exceeding thirty-nine lashes on the bare back.

The Criminal Code of Early Illinois

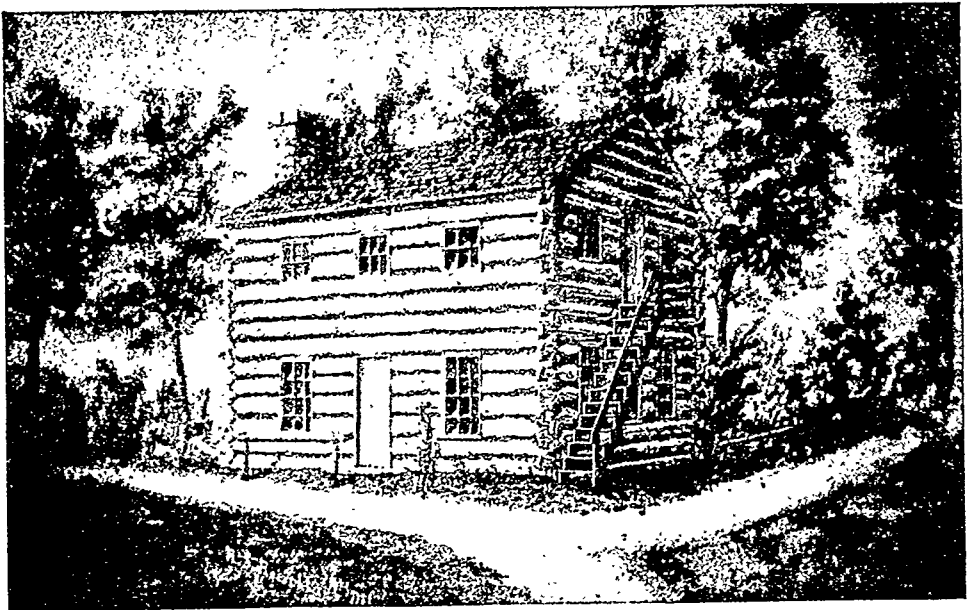
Even as late as the year 1832, and in spite of a provision in the State's first Constitution of 1818 which was borrowed from an Ordinance of 1791 of the French Revolutionary Assembly and was to the effect that "all penalties shall be proportioned to the nature of the offense, the true design of punishment being to reform, not to exterminate mankind," the criminal Code of the early state of Illinois was equally barbarous. Murder was punishable by death and rape by not more than 100 lashes and imprisonment for not more than ten years; arson by not more than 100 lashes on the bare back and imprisonment for not to exceed three years. Burglary was punished by not less than 50 nor more than 100 lashes, and a fine of not more than \$100 and imprisonment to not exceed three years. Robbery was punished by a fine not exceeding \$1,000, nor less than fifty nor more than 100 lashes and imprisonment not exceeding three years. Larceny was punished by a fine of not less than one-half of the value of the thing stolen, nor more than 100 lashes and imprisonment for a term not exceeding two years.

The Meaning of the Lash

In speaking of the use of the lash in Illinois and of a comparatively lenient sentence of thirty strokes (for from fifty to one hundred were usually provided for), Dr. Samuel Willard in an address before the State Historical Society of Illinois in January, 1924, said: "There was no penitentiary in the State and other penalties had to take the place of confinement. Near the court house on the public square in Carrolton, Illinois, there was set up a strong post, an unhewn log 10 feet high, with a cross piece near the top. I saw a man brought from the jail by a sheriff and a constable to be whipped thirty lashes for the theft of a horse. He was stripped naked to the hips, his arms were tied and the ropes were tied to the cross piece and tied as tight as could be without taking his feet from the ground. Then Sheriff Fry took that terrible instrument of torture, a rawhide. It was hard, ridgy and tough but flexible as a switch, three-fourths of a yard long. The sheriff began laying strokes on the culprit's back, beginning near the neck and going regularly down one side of his backbone, former Sheriff Young counting the strokes aloud. Each stroke made a red blood blister. When fifteen blows had been counted, the Sheriff paused and someone ran to the poor wretch with a tumbler of whiskey. Then the other side of the man received like

treatment. Then the man's shirt was replaced and he was led away to the jail. One of the by-standers said: 'Oh Lord, he isn't as bad cut up as C. H. was when L. M. flogged him three or four years ago.' Boy as I was, I did not know what a dreadful infliction it was."

With rare exceptions, indeed, and well into the nineteenth century, corporal punishment or bodily mutilation in some form or another appear to have been the foundation of almost all of our American criminal codes. Though the prevalence of the use of the lash,



First Log Court House, Quincy, Illinois. From Dunne's History of Illinois.
Courtesy of the Lewis Publishing Co., Chicago.

the stocks and other means of corporal punishment, was in some measure due to the very poverty of our early settlements and to the absence of secure penitentiaries in which the prisoners could be confined, and perhaps this fact is also the cause of the comparatively short prison sentences when indeed prison sentences were provided for, there can be no doubt that we were in a sadistic age. Following the classical and even more primitive theories of crime and of punishment our legislators sought merely to punish the delinquent, to satisfy the human craving for revenge and to intimidate other possible offenders. In their codes there was little recognition of any possibility of reformation or perhaps any desire that there should be any. There were

no provisions for probation or parole, though of course in favored instances the old plea of benefit of clergy was often used to accomplish the purpose, but this plea was a class plea and its use was the subject of much favoritism and deception. We were in an age of warfare both against foreign enemies and warlike Indian tribes and when pioneers are struggling for their very existence they have but little sympathy for the recreants that are among them. So, too, the frontiersman who has beyond him limitless expanses of territory into which the unemployed may go and make some sort of a living has but little sympathy for the idler and the weakling. Even today our poorhouses as a rule are public disgraces and often our convicts are better cared for in our penitentiaries than the poor in our asylums.

Calvinism and the Criminal Law

Throughout there was to be found in the American thought much of the old and primitive belief that a criminal was merely a disease germ in the social structure which had to be ruthlessly exterminated. Added to this was a form of social and religious snobbishness which, in the Christian Church and especially among our Scotch ancestors, found expression in the doctrine of pre-destination and in the theory that the world was divided between the saved and the damned. In the administration of the criminal law this theory resulted in the thought that if one was a sinner and was destined to destruction anyway, it was but foolishness and a waste of time to pay much attention to him and that any efforts for his reformation were necessarily futile. Even when the religious doctrine became more Christ-like and humane, there was a theory that all that was needed for reformation and social readjustment, if indeed social readjustment was ever thought of, was contrition and despair. Generally the exhortation of the prison chaplain, solitary confinement and complete silence so that the delinquent might ponder over the sins of his past, was the cure that was prescribed. No thought was given to the fact that beaten and crushed human beings lose all self-respect and all initiative and that years of isolation and of hard and unproductive toil in a penitentiary furnish but a poor preparation for the struggle for re-employment and readjustment in the world outside to which the prisoner must sooner or later be returned and in which he will be expected to win his way back, and of whose changes and growth and new methods of industry he is kept in complete ignorance while he is a prisoner.

The British Precedents

The criminal laws and practices in America, however, merely reflected the customs and habits of thought of the mother country, though perhaps there was the added feeling of intolerance which came from the belief that in a new land of opportunity there was no excuse for the weakling or for the unemployed. It is true that prior to 1833 Charles Wesley and George Whitefield had done much to further the cause of humanitarianism in England and the American Quakers in Pennsylvania had done much towards relieving the condition of the debtors and the accused persons in the jails, and that between 1776 and 1795 the Philadelphia Society for Alleviating the Miseries of the Public Prisons had secured the abolition of many of the barbarous criminal laws of Pennsylvania and the substitution of imprisonment for corporal punishment for all crimes except murder, but it was a long time before the reform was spread throughout the whole country or that the idea of the properly conducted penitentiary found a footing. As far as the mother country was concerned, in spite of the religious movement, under Wesley and Whitefield and the writings of Montesquieu, Beccaria, Romilly and Bentham, in spite of the noteworthy work of John Howard in the years between 1773 and 1791, it was not until 1811 that Elizabeth Gurney Fry began her work among the women prisoners in the English jails and until about 1835 that Romilly, MacIntosh, Peel and Buxton had succeeded in having repealed any considerable number of the English barbarous criminal laws and in having imprisonment substituted for corporal punishment or banishment. Both in England and in America, and even after the penitentiary was recognized and imprisonment came to be used as the usual means of punishment, it was not until quite recent years that any real thought was directed towards the reformation and socialization of the offenders.

The Lack of a Scientific Perspective and the Over-Emphasis of Punishment

It is true that the criminal code of 1833 of the State of Illinois was a great advance upon its predecessors and that the erection of a penitentiary in Illinois a few years prior thereto under the leadership of Governor John Reynolds, who has been characterized as "the rough diamond of early Illinois statesmen," made longer terms of incarceration and the abolition of flogging and of other barbarous punishments possible. Even in that code, however, and we might even

say in the average criminal code of today, we find no evidence of any intelligent thought in regard to the proper measure of punishment or the number of years of imprisonment that should be imposed. Then at any rate there was no thought of parole or of probation. There was no realization of the fact that the usual cause of the undoing of the criminal and of his original entrance into the paths of crime is to be found in the fact that he was an unsocial, super-selfish and super-egoistic being and that, lacking the social sense and the feeling of a social responsibility, he had rebelled against the laws of society and had been willing to himself prosper or to satisfy his desires at the expense of the suffering and of the rights of others. There was no realization of the fact that the reformation of unsocial beings can only be accomplished by the awakening of the social instinct. The consequence was that the terms of imprisonment were unduly long and that the prison discipline was such as to create hardened and desperate and crushed human beings and confirmed criminals rather than those who upon their return to society might be able to reinstate themselves as self-supporting and self-respecting individuals. Punishment, indeed, was the one object. The demand for the penitentiary, it is true, had come but it was mainly because the sight of blood was becoming repellent and not because the instinct of revenge and the desire for the punishment of the offender was not still in the forefront. We did not like the smell of blood but we were still reckless of and were still willing to break human lives. In England for a long time manhood was crushed out of the prisoners by the penalties of the treadmill and of opium picking and in America the barbarities of years of solitary confinement, of enforced silence and of the chain gang wrought disastrous consequences. Even today and in most of our American states our terms of imprisonment are cruelly long as far as the culprit is concerned, and foolishly long as far as the state and society are involved, since they not only necessitate a large expense in keeping the convict in jail but serve only to ultimately return to society social misfits and hardened criminals.

In recent years, however, many thoughtful and influential men and women have begun to hate crime rather than the offender; to emphasize the necessity for the eradication of the causes of crime rather than punishment and to fully realize that in almost every instance the prisoner must sooner or later be returned to society and that if his period in the penitentiary has not brought forth some measure of reformation, if in fact has not in some measure become socialized, he will only return to a new and perhaps more efficient

career of crime. Some, perhaps, are even coming to learn that there is a psychological moment for the release, at least on parole, of almost every prisoner.

Prison Discipline and Prison Labor

In the early periods of the century also, and in some of our states even today, the grossest cruelty was permitted in our penitentiaries and, when once the prisoner had been sentenced, no further attention was paid to him and he was placed entirely at the mercy of the prison warden or superintendent who, only too often, was an ignorant and inexperienced and more or less brutalized man. Even after flogging for the original offense was abolished by the statutes it was often by the statutes authorized in the jail. Perhaps more often the practice was indulged in without any authorization. The practice of farming out the convicts also was quite generally engaged in, and often the prison warden was allowed to make all the profit he could from his wards and to keep them in abject servitude.

The Report of the First Prison Warden

The first picture that we have of penitentiary discipline in Illinois is a pleasing and perhaps an amusing one. The second, however, hardly creates a sense of satisfaction. Under date of December 6, 1832, we find a somewhat curious report from the warden, John Ewing, to the State Legislature, which rendered an account for \$50.00 paid to one Samuel H. Dempton by order of the Inspector for the board of some of his wards and cash for \$173.59 for board and clothing furnished by himself to other convicts, and which acknowledged the amount of \$140.00 received in cash from the state treasury, and \$82.77½, received for the labor of the convicts who had been hired out, and which left a balance in favor of the warden of \$0.81½. The letter which accompanied this report was as follows:

"Vandalia, 6th December, 1832.

Sir:

"The Warden of the Penitentiary has the honor of submitting to the General Assembly, of the State of Illinois, the inclosed statement of the receipts and expenditures of the Institution, since the same has been under his control. It will be discovered that the receipts and disbursements have not been heavy. Only four convicts have been sent to me for confinement, and not having convenient and suitable rooms, or shops in the Penitentiary, the convicts could not be as

profitably employed, as otherwise they might have been. One of the convicts was discharged the 12th July last, his term of confinement (for six months) having expired. Two others were pardoned by the Governor of the State, on the 12th August last. There is yet one convict remaining in confinement, whose term will expire on the 6th September next.

"The Warden would remark, in reference to the convicts, that confinement in the Penitentiary, seems in every instance, to have reformed the immoral and dishonest propensities of the convicts, inso-much that the Warden confidently hopes, that they will return to Society, much improved, and consequently become more useful, and better members.

"The Warden would respectfully suggest to the General Assembly, the propriety of authorizing by law, the construction of suitable shops, that the convicts may be profitably employed during their term of confinement. This will no doubt be urged by the Board of Inspectors at the proper time; therefore, the Warden deems it unnecessary to say anything more in reference to the subject at present.

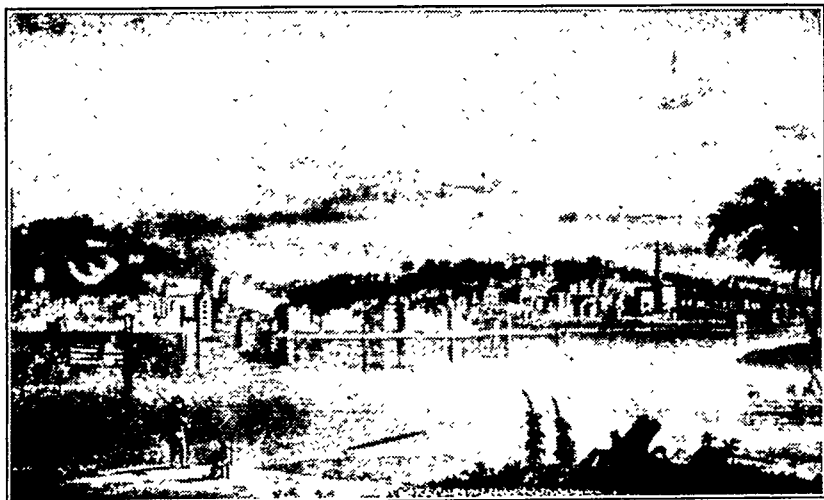
Respectfully,

JOHN EWING, Warden."

Certainly this report contains no great ground for criticism and it certainly breathes a spirit of friendliness, though we must remember that at that time the penitentiary system was very new, the prisoners were very few in number and the warden was evidently a kindly disposed gentleman. As soon, however, as the prison population began to increase, and perhaps when "there was money in it" we find an entirely different situation and an entirely different attitude of mind.

The Warden as an Entrepreneur

The Illinois Act of March 1, 1845, "for the conduct of the penitentiary at Alton and the labor of the convicts now and hereafter to be confined therein" gave to the warden, one Samuel A. Buckmaster, despotic power both as a jailer and as an employer and master. He was to apply one-fourth of the labor of the convicts to the manufacturing of hempen articles within one year from the commencement of the lease and thereafter the labor of the majority of the convicts for the same purpose. In consideration of this lease, he was to pay to the Treasurer of the State a bonus of \$5,100 and was also to pay the usual fees of the inspectors and to furnish at



VIEW OF ALTON, ILLINOIS

Early Penitentiary Is on the Hill to the Left of the Picture.
Courtesy of the Illinois State Historical Library.

his own expense the necessary guards and food, clothing, beds and bedding and necessary bills of physicians for the convicts.

A more complete condition of slavery could not well be imagined. The penitentiary was under the autocratic rule of the warden who was at the same time a prison official and the master of a factory. He was, of course, interested in getting all of the labor possible out of his employees. He furnished the food and the clothing of the convicts at his own expense, and the cheaper the food or the clothing the better for him. He was given the power to choose his own officers and guards. He of course would always be desirous of a steady and permanent force and would not desire to have his slaves emancipated.

Prior to this act and soon after the establishment of the first Illinois penitentiary also, an act of February, 1837, permitted the inspectors of the penitentiary, "to farm out the convicts to some individual or some individuals as may in their judgment best advance the interests of the state" and similar provisions are to be found even today in some of the southern states.

The Problem of Prison Labor

Even today in Illinois, though we have done away with the despotism of the warden-entrepreneur and captain of industry, of

the hiring out of convicts and of prison contract labor, we have not yet solved the question of prison employment and it still remains perhaps the greatest of our problems. Even today, at least 78 per cent of our prison inmates are kept in a state of idleness, or of semi-idleness and loafing on the job which is almost as disastrous in its consequences. So far, indeed, the influence of those who are interested in prison contracts and the influence of our labor unions has made it impossible for us to really train and reform our prison inmates and has demoralized the whole penitentiary system. In the report of the so-called Universities Committee which was made and published in Illinois in 1928 on "The Working of the Indeterminate Sentence Law and of the Parole System in Illinois" we find the following:

"Of course idleness in our penitentiaries should not be tolerated. There can be no doubt that general lack of employment is one of the greatest defects of our Illinois and of our other American institutions; that work properly done is the surest proof of reformation and of fitness for parole. No reformation can possibly be accomplished when men for months and perhaps years are compelled to remain in idleness. According to a recent report of Mr. Louis N. Robinson to the National Crime Commission, employment is recognized as essential in all European correctional institutions and this is the case in England and in Germany in spite of the fact of the large number of unemployed in the free population. Employment even is furnished when men are waiting for trial. We should, however, in no instance allow our prison wardens or those who are directly entrusted with the care and supervision and reformation of the convicts to make a personal profit from their labor. This was the defect of our earlier experiments. . . .

"Can we reasonably expect any large measure of reformation and preparation for a future life of freedom when, by criminal neglect or equally criminal cowardice and selfishness, we allow eighty-five per cent of our convicts at Joliet to pass their time in idleness? Would any man believe that two or ten years spent in idleness under the constant scrutiny of a guard who, himself, is little more than a prisoner, is a proper means of training and of education? Can this man be expected to make good on parole or, if not paroled, after his term has expired? The Board of Paroles has no responsibility for, or the control over, the conduct of our prisons. Yet it has to deal with the finished prison product. Every deficiency in prison management, therefore, makes its task the more difficult."

Yet so far we have done nothing towards a solution of this paramount and pressing prison problem. We have surrendered to the pressure of militant political minorities. We have counted votes. We have been reckless of human destinies and of human lives.

Typical Criminal Codes of the Nineteenth Century

After the establishment of our American penitentiaries and in the middle of the nineteenth century our most liberal criminal codes were perhaps to be found in Massachusetts, Wisconsin and Illinois. In all of the codes, however, but to a much lesser extent in Wisconsin and Illinois, the terms of imprisonment were unreasonably long. This, as we have before stated, is the case today. Even though in these later years, in the state of Illinois and in a large number of the states, we have adopted the policy of the indeterminate sentence and of the parole and sentence men from one or five or ten years to ten, twenty, or life, as the case may be, and even though we leave it to our boards of parole to later determine the actual period of incarceration, the growing tendency of the legislature has been to raise both the minimum and the maximum terms and usually so influenced have these boards been by the traditions of the past, the pressure of the public press and of our various state and city private enforcement bodies and commissions, that little leniency has been shown or real judgment been displayed. It is indeed noticeable that, though the system of the indeterminate sentence and of the parole today exists in Illinois, the average period of actual incarceration which is exacted exceeds that which prevails for similar offenses under the fixed sentence plan in England and in Germany and even in the United States Federal Courts.

In Illinois the criminal code of 1833 abolished flogging as a punishment for crime and lengthened the terms of imprisonment. Murderers, as before, were punished by death as were also those who were convicted of the crime of treason. Rape was punished by confinement in the penitentiary for a term of from one year to life. Arson of any dwelling or mercantile or public building was punishable by a term of imprisonment for not less than one nor more than ten years, and arson of other buildings for a term not exceeding two years and a fine not exceeding \$100. The penalty imposed for burglary in the night time was a term of not less than one nor more than ten years; for robbery, confinement in the penitentiary for not less than one year nor more than fourteen years; for larceny, confinement for not less than one nor more than ten years; for embezzle-

ment by a public servant, a term of not less than one year nor more than ten years; for counterfeiting, confinement for not less than one year nor more than fourteen years; for perjury, not less than one year nor more than fourteen years; for bigamy, a fine not exceeding \$1,000 and imprisonment in the penitentiary for not exceeding two years; for adultery a fine of not more than \$500 or imprisonment of not more than one year; and for fornication a fine not exceeding \$200 and imprisonment not exceeding six months. Persons under the age of 18 years were to be confined in the county jails except in cases of robbery, burglary or arson, for the perpetration of which crimes they were sent to the penitentiary.

In Massachusetts in 1836 murder was punishable by death; engaging in a duel, or challenging another to fight such duel, by a term of imprisonment in the state prison not exceeding twenty years, or by fine not exceeding \$1,000 and by imprisonment in the county jail for not more than three years. Robbery with a dangerous weapon was punishable by imprisonment in the state prison for not more than twenty years and assault with intent to rob or murder by imprisonment in the state penitentiary for not more than twenty years. A somewhat inconsistent statute also provided that robbery should be punishable by imprisonment in the state prison for life or for any term of years provided the person was not armed with a dangerous weapon. Rape was punishable by death. Arson in the night time was punishable by death if a person were in the house; if not, by imprisonment for life. Arson in the day time was punishable by imprisonment for life. Burglary of a dwelling house, the offender not being armed, was punishable by imprisonment for not more than twenty years; if armed, by death. Larceny was punishable by imprisonment for not more than five years or if the amount involved did not exceed one hundred dollars by imprisonment for not more than one year or by fine not exceeding three hundred dollars. In Mississippi, and as late as 1848, petit larceny was punished by not exceeding thirty-nine lashes and the stealing of any neat cattle, hog, sheep or goat by a fixed sentence of thirty-nine lashes *well laid on*. Evidently under these codes petit larceny was considered to be an offense of the vulgar since grand larceny was punished by imprisonment in the penitentiary for a term not exceeding five years.

The Penal Code of Wisconsin for 1858, if we take the terms of imprisonment into consideration, appears to be very liberal even compared with that of Massachusetts. Murder in the first degree was punishable by imprisonment for life; being present at a duel,

by imprisonment for not more than two years and not less than one year; fighting a duel by imprisonment for not more than ten years nor less than three years. If death ensued in a duel the offender was punished by life imprisonment. Arson in the night time, if a person was in the dwelling, was punished by imprisonment for not more than fourteen years nor less than seven years, but if there was no person in the dwelling, by imprisonment for not more than ten years nor less than three years. Larceny, if the amount exceeded \$100 was punished by imprisonment in the state prison for not more than three years nor less than one year. If less than that amount and exceeding \$20, by imprisonment in the state prison for not more than one year nor less than six months or by imprisonment in the county jail for not more than one year. Adultery was punished by imprisonment in the state prison for not more than two years, nor less than six months, or by fine not exceeding seventy dollars nor less than three dollars. Burglary of a dwelling house while armed was punished by imprisonment in the state prison for not more than twelve years nor less than four years; and if not armed, by imprisonment for not more than five years no less than two. Robbery was punished by not less than five nor more than one years imprisonment if the assailant was armed; if he was unarmed, by not more than three nor less than one year's imprisonment. Rape was punished by imprisonment of not less than ten nor more than thirty years.

It is perhaps worthy of notice that even today in the state of New York both burglary and robbery in the first degree are punishable by imprisonment for an indeterminate term, the minimum of which shall not be less than ten years and the maximum not more than thirty years and that grand larceny in the first degree which includes the taking of more than five hundred dollars, in any manner whatever, is punished by a term of imprisonment not exceeding ten years. It is also of interest to know that there is today in the state penitentiary of New York a youth of twenty-one years of age who is serving a sentence of from fifteen to thirty years with an additional sentence of from five to ten years for the use of a gun, who while armed stole property and money of the value of \$595.

The Disparity of Punishments

No matter, indeed, how far we may democratize our institutions our criminal law always reflects the desires of a property owning and a ruling class and there is always in them a desire to severely punish one who interferes with their property and personal interests.

Perhaps nowhere is this factor better illustrated than by the statutes of Kentucky of 1899, under which although grand larceny, that is to say, the stealing of money of the value of twenty dollars or more, was punished by a penalty of confinement in the penitentiary for from one to five years, we find in the same statute (1899), the trifling penalty of not less than \$50 and more than \$100 or imprisonment for not less than ten nor more than fifty *days* or both, provided for in the cases where a man pointed a deadly weapon at another or while upon the public highway or in any public place fired a pistol at random. The same statute also provided for a penalty of not less than twenty-five nor more than one hundred dollars or imprisonment in the county jail for not less than ten nor more than thirty days, in the discretion of the court or jury trying the case, for the offense of carrying concealed weapons.

Certainly these statutes were enacted for the benefit of the roistering gentleman and in a period where perhaps there was a desire not only that the gentleman might roister but a fear of the Negro and a desire of the white gentlemen to go armed. Even today in Tennessee where there is a statute against carrying concealed weapons, the police will candidly admit that it is only enforced against disorderly characters and colored persons, and so common is the carrying of weapons that hotel keepers have been known to nail placards on their bedroom doors containing the inscription "Guests will kindly desist from leaving their pistols in their rooms."

For a long time, indeed, in America and in the state of Illinois, our legislatures and our judges have been in the habit of prescribing prison punishments with reckless abandon and with no knowledge or concern of what a term of one year, five years, or ten years really involves and means. Nowhere as yet in America has any intelligent legislative thought been directed towards the prison sentence either in regard to the real social danger of the particular offense, the degree of moral turpitude that is involved or the effect, as far as reformation and rehabilitation is concerned, upon the prisoner himself. Even today in Illinois, as far as the minimum penalty is concerned, it is safer and considered less of an offense to bribe a judge than it is to bribe a baseball or a football player, since in the first case the minimum penalty is but one year in the penitentiary while in the second it is two years. In Illinois also it is more dangerous to bribe a baseball player than it is to hold up a man at the point of a gun. As far, also, as maximum penalties are concerned, it is much safer to bribe a judge than it is to commit a robbery even of a small amount

of money since the maximum penalty in the first instance is only five years while in the latter it is twenty. Even in these later days the penalty prescribed for stealing a horse is from three to thirty years. So, too, men and boys can be placed on probation in cases of robbery, no matter how large an amount of money may be involved, but not in cases of larceny where more than fifteen dollars is concerned.

How Criminal Statutes Are Passed

Although one cannot but notice the foolish severity and inequality in many of our criminal laws and especially if we take into account the fact that sooner or later the prisoner must be returned to society to reestablish himself and the undoubted fact that long periods of imprisonment absolutely incapacitate the convict for such an attempt, we can easily account for the fact by the lack of a public interest. We are unwilling to go to the trouble of any scientific recasting and revision and of attempting in any way to determine the proper measure of punishment or to consider the way in which criminal laws nearly always originate. Whenever one is wronged, his automobile stolen or in the early days his cattle driven off or his chicken roost depleted, he is always ready to rush to the legislature and to demand a drastic penalty that will protect him or at any rate will gratify his desire for revenge. In this connection, indeed, there is much of suggestion in Ives' History of Penal Methods, Chap. I, page 18, where in speaking of this tendency in England the author says:

"The number of capital offenses was truly enormous. Onward from 1688 they steadily increased owing, as has been well remarked, to the 'unhappy facility afforded to legislation by parliamentary government.' Members who could not become ministers and yet who wanted to do something often had interest enough to hang somebody or at least to get a law passed creating a new capital felony. Thus through the ambitions of private members and the general callousness of the ruling class, the number of capital offenses kept ever growing until in theory there were more than two hundred of them."

When, also, once a statute has been passed our public indifference is such that it is liable to remain on the books for a long period of time no matter how unreasonable it may be. Each new legislature, indeed, creates new crimes and adds new penalties without any idea or knowledge of the laws that have already been enacted, and thus our codes are created.

Prison Punishments

It has only been recently also that we have paid any attention to the undue severities of our prison discipline, and to the imposition of penalties under the uncontrolled discretion of our prison wardens and superintendents for the violation of prison rules which would have been considered cruel and unusual and therefore could not have been imposed by the trial judge for the original offense.

Even as late as 1887 the Statutes of Virginia authorized the superintendent of the penitentiary to punish "the violation of any of the rules prescribed by the Governor by lower and coarser diet, the iron mask or gag, solitary confinement in a cell or the dungeon, or by stripes." Similar provisions were to be found and still are to be found in the codes of many of the states. In Georgia and Florida, at any rate until within the last two years, the use of the lash was not merely conceded to the prison warden but to the employers of prison contract labor. According to a recent handbook on American prisons, published by the National Society on Penal Information, the lash was not abolished in Kentucky until 1920 and the water cure until 1925 and even in 1929 men were cuffed to the cell doors sometimes from five to twenty days. In 1929 the straight jacket was still used in Rhode Island and men were confined for punishment in Wyoming to dark underground cells and sometimes while shackled had streams of cold water thrown over them.

In Illinois an act of January 6, 1827, gave to the warden the power to order solitary confinement for not more than thirty days. Though the use of the lash was forbidden in 1867, an act of 1868 authorized the warden "in order to produce the entire obedience or submission of any convict to punish said convict by solitary confinement in a dark cell and by deprivation of food except bread and water until such convict should be reduced to submission and obedience." Though in 1871 this act was repealed and in its place it was provided that "it shall not be lawful in said penitentiary to use any cruel or unusual mode of punishment or to use any kind of whip whatever" until very recently the practice prevailed in Illinois of compelling recalcitrant men to stand often for twelve hours a day, with intervals of a half hour a day for meals, with their hands projecting through the bars of the cell securely bound and in some instances this punishment was continued for as long as thirty days, and there is a recent record of at least one man who died after undergoing such a punishment. There can be no question that no court could have imposed such a punishment in the first instance, yet in

the prison the culprit had no recourse. The purpose of the punishment was candidly stated to be to break and it is quite clear that no man can stand erect under the conditions described for even two days without serious injury to his whole physical and mental organization. The courts have realized these facts.

Some Court Opinions

In *Howard v. State*, 28 Ariz. 433 (1925) thirty days' deprivation of all food, save bread and water, was held to be a harsh and unreasonable and unusual and unjustifiable punishment, from which relief could be given by the courts. In *State v. Cahill*, 196 Iowa 486, the court sustained the right to solitary confinement on bread and water but only for a short period of time. In the case of *State v. Nipper*, 166 No. Car. 272 (1912) where there was no statute on the subject, the court held that "in view of the enlightenment of this age and the progress which has been made in prison discipline, the conclusion must be that corporal punishment by flogging is not reasonable and cannot be sustained. That which degrades and brutalizes a man cannot be either reasonable or necessary." In the Mexican Code of 1903, Article 385, we find the provision that "the lash, or any other physical punishment, shall not be employed either as a sentence of court or as a part of prison discipline. In New York, a statute prohibits the inflicting of any blows upon any prisoner except in self-defense or to suppress a riot. In *State v. Mincher*, 172 N. Car. 895, a convict guard was convicted of assault and battery for whipping a convict for refusing to go to work. In this case, the court said, "Prior to the Constitution of 1868, corporal punishment was allowed for manslaughter, for cutting off the ears, for perjury and for larceny, but in no case without the verdict of a jury of twelve men rendered in open court and the sentence of a judge. The advancing civilization of the age required that corporal punishment even in such cases should be abolished which was done by the Constitution of 1868. This removed from the Statute book all possibility of whipping or other corporal punishment even by the verdict of a jury with the guaranteed right of the benefit of counsel and judgment of a court. Certainly, it could not have been contemplated that whipping should be inflicted without a trial of any kind and without sentence of court. . . . Nothing is more fatal to discipline in prisons than the infliction of punishment which deprives the convict of self-respect and makes him an outlaw in spirit by its injustice and brutality." It may also be added that Belgium does

not allow any kind of corporal punishment and any officer striking a prisoner except in self-defense loses his position, the contention being that corporal punishment brutalizes. For the same reason the lash was abolished in Austria in 1866.

The Use of the Lash

Until very recently, indeed, the lash was almost everywhere looked upon as an essential to prison discipline, and prison discipline itself to be the almost private concern of the prison warden or the prison superintendent. There were, of course, exceptions, the most noticeable, perhaps, being Wisconsin which at an early day, and almost from the beginning of statehood, not only abolished capital punishment but prohibited the use of the lash both in and outside of the prison walls. The general practice, however, was otherwise and even where the use of the lash was prohibited by statute the law was frequently and perhaps is still in many instances being avoided. In some cases the body of the convict was covered with a sheet soaked in salted water and a strap used. This procedure did not draw blood and produce permanent marks of injury which might afterwards be detected, but the torture was none the less excruciating and the sense of degradation perhaps increased. More often, perhaps, they were avoided by the use of the straight jacket, the water cure, the so-called solitary cell, the screen and stringing up, and it is only in recent years that these practices have in any manner been abandoned or reduced in their severity.

Modern Science and the Third Degree

As far also as the police are concerned, the third degree has been everywhere and perhaps is now everywhere resorted to in America. It is frequently used in Illinois and in the city of Chicago. Its excuse of course is the inability to obtain evidence and the constitutional provisions which make it impossible for the defendant to be called as a witness on the trial or be compelled to testify. The fundamental reason for its existence, however, is the lack of detective ability and scientific knowledge on the part of our American police and in many instances it is a case of the ignorant man using force because he has not brains enough to accomplish the result by other means. It is also perhaps due to the fact that in most of our American cities our police forces are greatly undermanned and inadequate and really have not the time for thorough investigation. These defects, however, can be remedied and in Illinois the advent of scientific

crime detection laboratories have already done much in the field. At the Northwestern University the lie detecting machine has been now practically perfected and its reliability is more and more being recognized; so, too, the science of ballistics has become thoroughly recognized. Science, in short, will in the end overcome lawlessness and brutality, and the better trained and better educated our police are, the less cause will there be for complaint. In the matter of police schools and a better trained police force both the University of Chicago and Northwestern University are now deeply interested, and both universities have recently cooperated in a study and reorganization of the Chicago police force.

The Prison as a Means of Reformation

The old and brutal practices were and are, of course, due to the continued classical attitude of looking upon the penitentiary as a place of punishment merely, and the theory that, even if reformation was the ultimate object, fear and suffering were the only means of creating the contrite spirit which it was believed would furnish the cure. They were due to a complete failure to realize that the primary cause of crime is an anti-social spirit and a super-egoism which makes one reckless of the rights of others, and that if reformation is to be accomplished it is by making the anti-social social. They were due to a failure to realize that a crushed and hopeless and hating man is not one who is thus socialized and is hardly one who upon his release is likely to rehabilitate himself and to become an honest and a productive worker.

Above all, they were due to our practice of forgetting the criminal after once he had been convicted and of placing him in the almost despotic control of unscientific and untrained and uneducated, if not primitive, men, and the failure to realize how hard it is for him who guards to be a leader and a friend and to entertain anything but a feeling of hostility towards those he watches over. Few of us, indeed, realize how many policemen come to hate criminals and how many prison guards to hate those who are under their control. We are, however, now entering into a new era and fortunately a new era which is not the result of a false sentimentalism but of scientific knowledge and research.

The Prison Guard and the Prison Warden -

Though it has taken us a long time, we are now coming to realize how dangerous a thing it is to place the unlimited power of inflicting

pain in the hands of any individual. In the past we had failed to realize that prison guards are often ignorant men and that the ignorant man likes to assert his authority and when he cannot rule by reason and by strength of character is prone to seek to rule by force. We had failed to realize the incipient sadism that is in all men. We had failed to realize that often the flogger, himself, derived even a form of sexual pleasure from the flogging. We had failed to realize that our wardens and our prison officers are too often appointed solely for political reasons, are often entirely untrained and that the position of the prison guard is well nigh intolerable and requires a man of the highest character. His salary usually is ridiculously low, his hours of labor are usually very long; often he is forbidden to speak with the convicts and he himself is almost a prisoner. He is chiefly engaged in watching idle men; he gets into the habit of believing that his chief duties are to report the infractions of the rules rather than to guard against them. He has to make a showing, as it were, and only too often the inexperienced prisoner (we say inexperienced because usually the confirmed criminal has learned to size up the guard and is his superior in mentality) is the victim of the guard's own discontent and isolation. Now we have come to realize that nonetheless it is usually on the reports of these guards that the prison punishments are based, good time is allowed or disallowed and in a large measure our Parole Boards act and that their likes and dislikes often have a tragic influence.

These defects have existed throughout the century we have been considering but thanks to the penologists, the psychiatrists, the psychologists and the sociologists, they are gradually being pointed out and gradually being remedied and we are more and more insisting upon prison efficiency and upon the looking upon our penitentiaries and reformatories as a part, as it were, of our educational systems. The time, perhaps, is not far distant when as much care will be taken in the selection of our prison guards and our prison wardens as is now taken in the selection of the presidents of our state universities, and the teachers and superintendents in our public schools.

The tendency will be toward segregation, smaller prisons and more adequate prison forces. At the present time, in most instances our penitentiaries are over-crowded and we have not provided for proper segregation and for individual treatment. So few are the guards at most of our institutions that they are in constant fear of outbreaks and when one fears he is usually cruel.

The Failure to See Things Through

The trouble with us was and still is that we failed to see things through and that the interest of the public was only centered in the courtroom and ended with the prison sentence. Always, indeed, there has been a tendency among reformers to center upon one objective and when that has been achieved or put into the form of a statutory enactment to think that the end has been achieved and to desist from further efforts. Just as the opponents of slavery seemed to think that all that was necessary for the negro was to abolish slavery as a legalized institution and were willing to leave the ex-slave to work out his own salvation; just as the proponents of the Eighteenth Amendment seemed satisfied with the passage of the Constitutional provision and ceased in their real work and fundamental program of temperance education, so, when capital punishment and the pillory and the lash were generally abolished and the penitentiary or imprisonment were substituted, only too often but little attention was paid to the nature or efficacy of the new method of punishment or to the conduct of the jails and penitentiaries and the character and training of the men who were placed in charge of them. The English reformers toyed with the idea of colonies for criminals in Australia and of course by this innovation did much to reduce the number of executions. In an age of sailing vessels, however, they failed to take cognizance of the hardships of the long sea voyage and of the cruelties that might be practiced by the usually ignorant and brutalized sea captains, guards and overseers, and even by the farmers and ranchmen to whom many of the convicts were practically sold. In America we have abolished the pillory and the lash and we have adopted the expedient of the penitentiary but even as yet we have failed to meet and to adequately understand the problem of prison punishment. In this year of 1933, however, we are beginning to see things through and to look a little further than we ever did before.

Super-Egoism and the Democratization of the Law

In the past penologists and criminologists, both in their harshness and in their periods of humanity, have merely reflected our class organization and our social and religious theories. Our criminal codes and practices were founded upon disgust, contempt, the idea of revenge, and above all upon fear. They were not always the result of a high and intelligent regard for the dignity of the state and of the social order but were rather the result of the fear of

those who had of those who had not and a drastic attempt on their part to keep what they possessed. Beneath them was much of the hypocrisy of the unco guid. Today there is coming to be emphasized the dignity of the individual and the idea of social protection. Every day we are adding to our list of crimes and of the forbidden and are creating new offenses not against the strong but against the weak. We are passing anti-child labor laws. We are compelling the guarding of machinery in our factories. We are seeking to prevent accidents on the railroads and in the mines. More and more also we are overcoming our class consciousness and our religious prejudices and are treating crime as the symptom of a disease. We are seeking to cure the socially sick and the socially deranged as well as to keep from doing harm those who are sound. We are democratizing our law and are making it more scientific. The democratic urge has made us interested in the social sciences and we are rapidly coming to learn that back of all human behavior is the mentality of the individual.

In the past the reaction against crime was founded on the same kind of a philosophy that created it. The average criminal is merely an unsocial or anti-social person. He is super-egoistic. Thinking only of himself he is willing to profit by the loss or suffering of others. His world is bounded by his own desires. Though sometimes his sense of obligation and his interest includes his own family or clan, it rarely gets beyond it. Usually he cares nothing for the families of others or for society as a whole. This is the outlook of the criminal, but it is also the outlook of many of our earlier penologists and criminal law makers. It is the outlook of many seemingly good citizens even at the present time. At a time when slavery was permitted and women and children were subjected to unspeakable hardships in the factories and in the mines, poachers were hung for stealing rabbits and old soldiers for begging upon the public streets. The criminal law was class made and the dominant class seemed to be interested only in protecting itself. Today, however, the dominant class is more and more coming to be the class which thinks, which sympathizes and which understands.

The Juvenile Court and Probation and Parole in Illinois

In Illinois especially has this idea been shown in the form of the creation of a juvenile court in 1889 (the first in the country), in the extension of the privilege of probation in 1911 to adults as well as to children and the passage of a general parole act in 1915; in the creation in 1927 of a department of public welfare with broad

powers of supervision over both the penal and charitable institutions of the state, in the creation in Chicago under the leadership of Judge Harry Olson, of the largest and perhaps best equipped psychiatric laboratory in the world, in the appropriation in 1928 through the efforts of Hinton G. Clabaugh, of the then unprecedented sum of \$1,465,206.00 for the furtherance of the parole system, and in 1933 the passage by the present Legislature of an act for the segregation and the custodial (not criminal) care and treatment of the feeble-minded who possess criminal tendencies. All of these innovations are noticeable and perhaps all of them arose out of the primary agitation for probation and parole. The inauguration of the polices of probation and parole is noticeable not so much on account of the change which it has made in the administration of our criminal law but in the change which it evidences in our attitude towards crime and towards the criminal. Though, indeed, both probation and parole have strong economic arguments in their behalf and there can be no doubt that the systems, if properly administered, can save to the public large sums of money which otherwise would have to be expended in the construction of new penitentiaries and jails and in the maintenance of the persons there confined, if it had not been for this changed attitude towards crime and the criminal, probation and parole would have been but little considered.

The Growth of the Policy of Probation

Back of probation and parole, indeed, is a human and democratic interest and understanding and the Christian and the Democratic theory which is unwilling to concede that anyone is utterly lost and incapable of reformation. Perhaps it is a theory which is contrary to the law of nature and to the doctrine of the survival of the fittest. It is a theory that, as far as possible, it is the duty of society to seek to make the unfit, fit and able to survive. Perhaps it is unscientific and impracticable but it is an evidence of a humanity which is the finest flower of any civilization. From an early time and perhaps always the American trial judges, like those of England and the continent of Europe, at times had such an interest and understanding and were in the habit of applying a crude and perhaps extra-legal form of probation of their own. They would continue cases during good behavior and defer the entry of judgment under the pretext of affording the defendant an opportunity to appeal to executive clemency and then perhaps not bother themselves as to whether he appealed or not. But these practices had no legislative sanction and though some of the

state supreme courts sustained them under the theory that the power to suspend the execution of a sentence was a power inherent in the judges there was but little justification for it and it was expressly repudiated by the Supreme Court of the United States in the so-called *Killetts* case. A Congressional Act was therefore necessary and though there was much opposition thereto, and even on the part of some of the federal judges, this was accomplished in 1925. The movement, however, began in the States and the undoubted pioneer of probation in America under the old plan was John Augustus, a shoemaker of Boston who, as a volunteer, received his first probation case in August, 1841; and from that time on and until 1878 there was much semi-legal judicial probation and many voluntary probation officers. In 1878 the first juvenile probation law in Massachusetts, in fact in the United States, was passed and the practice was legalized, though under it, voluntary officers alone were provided for. Gradually the probation system was made state-wide in Massachusetts, though applicable only to juvenile offenders, and in 1881 the appointment of the officers was transferred to the courts and was made mandatory. In 1898 Vermont followed the example of Massachusetts and a state-wide juvenile law was enacted which required the appointment of a probation officer by the county judge in each county. In 1894 in Maryland the courts were authorized to suspend sentences generally or for a definite time and under this act a juvenile probation system was gradually built up in Baltimore, at first by the use of voluntary and later salaried officers. In 1891 the first adult probation law was enacted in Maryland. About the same proceeding took place in Missouri. In 1899 an adult probation law was enacted in Rhode Island which provided for a system of complete state control but exempted from its provisions cases of "treason, murder, robbery, arson, rape and burglary," which exceptions even today are quite common in the several states. In the same year, 1899, Minnesota passed a probation act which provided for the appointment of county probation officers but which was limited to children under the age of eighteen years and, though four years later the age was extended to twenty-one, still did not provide for adults.

The Juvenile and the Boy's Court in Illinois

In the same year, 1899, Illinois passed the first juvenile court law in the world with probation at its corner stone and in the same year Colorado enacted a compulsory education law which made possible the development by Judge Lindsey of a juvenile court and the

use of truant officers as probation officers. Though the Illinois Juvenile Court Act was limited in its operations to minors who had not reached the age of seventeen, it soon led to the establishment in the Chicago Municipal Court of a Boys' Court for those between the ages of seventeen and twenty-one and to a larger interest in the problems of adolescent youth and to a more individual treatment of juvenile offenders. In 1910, thirty-six states had adopted the policy of probation as far as juveniles were concerned and perhaps today all of our states, except two, recognize the practice.

Adult Probation

Adult probation, however, grew more slowly. After Massachusetts it came in New Jersey in 1900; in New York in 1901; in California, Connecticut and Michigan in 1903; in Maine in 1905; and in Illinois in 1915. Today all but fourteen states recognize adult probation in some form or another although perhaps only thirteen states have developed state-wide systems.

Today, indeed, it may be said that, although in most of our states, and certainly in Illinois, our probationary forces are greatly undermanned and in many the laws are not scientifically developed or administered, everywhere the system or plan is gaining a securer footing, more and more are the qualifications of the probation officers being raised and more and more is the calling coming to be looked upon as a necessary and as a dignified profession.

The most remarkable growth, perhaps, has been in the Federal Courts themselves and this has largely been due to the efforts of the American Probation Association under the leadership of its Secretary, Charles L. Chute, and Sanford Bates, the Director of Federal Prisons. Formerly the judges at times granted a sort of a probation under an assumed inherent power. In 1916, however, in the so-called *Killetts* case, 242 U. S. 27, the United States Supreme Court held that the judges had no such authority and it was not until 1925 that a Federal Statute was passed which would put Federal probation on a legal footing. Even after the passage of the Act many of the Federal judges were hostile to it and gave to it little consideration. In the first Act of 1925 each judge was awarded only one probation officer and the annual Federal appropriation for the whole field was only \$25,000. If the system was to be used at all, therefore, voluntary officers had to be relied upon. By 1890, however, the appropriation was increased to \$200,000, a national probation supervisor was provided for and the whole system was coordinated. In 1931 the

appropriation was increased to \$230,000 with the result that the number of persons under probation supervision had increased from 4,230 on June 30, 1930 to 14,175 persons in 1932 and in addition 893 persons released on parole and placed under the supervision of probation officers. Steps also are now being taken to secure better training on the part of the officers.

The Indeterminate Sentence and the Parole

In recent years also the growth of the system of parole has been marked and with it that of the indeterminate sentence, although the coordination of the two is an achievement of these modern years. The indeterminate sentence was first recognized in America in the case of juveniles and applied in the New York House of Refuge in 1824 and in the Pennsylvania House of Refuge in 1826. Soon it came to be realized that the indeterminate sentence had to be supplemented by parole and in 1870 the Irish Prison System was studied and applied and practiced in New York. Generally speaking, however, parole systems of various kinds arose in America between 1890 and 1900 and independently of any indeterminate systems. Today over half of the states have adopted some form of the indeterminate sentence and still more the parole system. In 1902 only four states of the American Union were without one or the other. In 1925 the laws of forty-six of the American states made definite provision for the release of prisoners on parole.

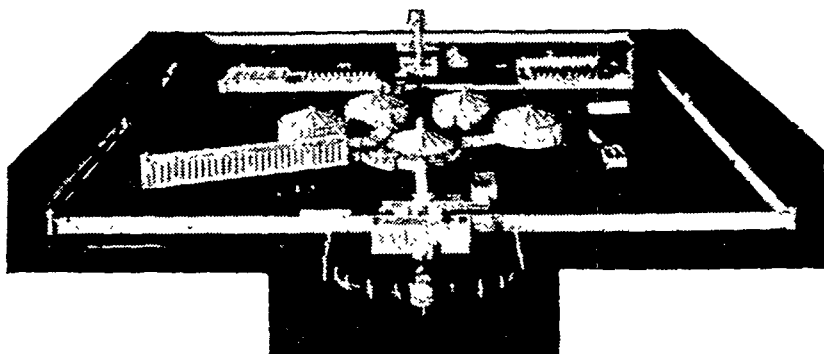
Parole in Illinois

In Illinois the growth of the system was slow and delayed but perhaps not any more so than in the country generally. Certainly the thought and example of the outside world had much to do with its evolution. In 1867 the legislature authorized a somewhat crude plan for the parole of boys; in 1893 a State Home for Juvenile female offenders was created and a partial system of parole was established. But neither of these acts did much more than to provide for indenture and apprenticeship and for adoption. In 1895, however, the policy of the parole was applied to adults and made general except in a few specified cases. For a time the power of granting parole was vested in a Board of Prison Commissioners who were appointed by the Governor. In 1917 a Department of Public Welfare was created and the Board of Pardons and Paroles was created as a subdivision thereof. In 1927 a practically independent board was created though the

control of the field officers was still vested, and we believe illogically and erroneously, in the Department of Public Welfare. In the same year the large and, as far as we can learn, the unprecedented sum of \$357,800 for the biennial period were appropriated for the use of the Board of Paroles and \$1,108,400 for the use of the Department of Public Welfare for the supervision of those who were placed on parole. Since that time and largely owing to the current financial depression, the appropriations have not been as large but in no other state in the Union have the necessarily concurrent systems of the indeterminate sentence and of parole been more fully recognized and firmly established or the fact realized that under these systems the members of the parole board act as assistant or sentencing judges and should be accorded the same measure of respect and support that is accorded to the judiciary as a whole. One thing, however, is lacking and that is the complete elimination of this Board from political influence and from political control.

The Growing Interest of the Psychiatrist and Sociologist

Perhaps, however, the most remarkable and noteworthy advance of these modern years in America, and especially in Chicago, has been the recognition of the use of psychiatry and of the psycho-analytic approach to the criminal problem. This has resulted not only in a more scientific treatment of the delinquent and a general movement for the segregation of the different classes of our defectives but in the seeking out and the eradication of the causes of crime. More and more we are coming to recognize that society itself is in a large measure responsible for its criminal classes. More and more we are studying the questions of heredity and of environment, of education and of housing. More and more we are coming to look upon the criminal as a social misfit rather than as a social outcast or untouchable. More and more are we urging the segregation and the custodial treatment of the mentally defective who are liable to become a danger either to themselves or to society and even before a crime has been committed. More and more we are seeking to bring science and human knowledge into the administration of our prisons and penitentiaries. Less and less are we coming to look upon punishment and punishment alone as the only solvent of our criminal problems. Indeed, the coming victors in the conflict will be the doctors, the psychiatrists and the sociologists, the labors of whom inevitably will not only promote a radical change in our attitude towards crime and the criminal but a still more radical change in



ILLINOIS STATE PENITENTIARY, STATEVILLE

Henry Horner, Governor of Illinois Rodney H. Brandon, Director of Public Welfare
 Frank D. Whipp, Superintendent of Prisons C. Herrick Hammond, State Architect
 James O. Hogg, Jr., Supt. of Construction

KEY TO MODEL — LETTERS INDICATE CELLHOUSES

Figure.

1. Gate House
2. Administration Building
3. Guard Hall
4. Visiting Room
5. Detention Ward
6. New Hospital
7. Operating Ward
8. Greenhouse
9. Connecting Tunnels
10. Dining Room
11. Officer's Mess
12. Bakery
13. Band Room
14. General Kitchen
15. Special Cellhouse
16. Laundry
17. Power House
18. Electrical Transformers

Figure.

19. Auto License Factory
20. Reservoir
21. Deep Water Wells
22. Furniture Shop
23. Furniture Warehouse and Soap Factory
24. Dry Kilns
25. Steel Fabricating Shop and Shoe Shop
26. Cold Storage and Commissary
27. De-hydration Plant
28. Sentry Towers
29. Wall Towers
30. South Gate
31. Recreation Grounds
32. Sick Bay
33. Community Gardens
34. Community Greenhouse

the nature and length of our prison sentences or commitments and in the treatment of the mentally deficient while confined. They are today teaching us and in the future will more and more teach us something of the psychology of punishment and what it really means to be confined.

Prison sentences will be materially shortened and, as far as is possible, even be avoided except in the case of the hardened criminal and of the feeble minded and of the incurably insane, for whose protection and well-being as well as for the protection of society itself, permanent segregation will often, and to a much greater extent than today, be found necessary and be required. More and more will we

come to look behind and beyond the act and the crime and to make the punishment fit the offender rather than the catalogued crime. Perhaps all of our so-called criminal sentences will be commitments rather than sentences and after the commitment it will be left to expert boards to determine what shall be done with a person and whether he shall be treated as a criminal or be treated merely as one who is mentally deficient. The devices of probation and of parole will be much more utilized than they are today. Though the penitentiary will still be a place of punishment, much more attention will be given to the training of the convict. The value of the prison library will come to be understood and the real value and necessity of prison athletics, prison entertainments and vocational training. More and more will the fact be realized that the fundamental cause of crime is a lack of the social sense and a superegoism. More and more we will come to learn that the function of the penitentiary is, as far as it is possible, to socialize the asocial and that men and women cannot be made social and fit to join and work with their fellow men by denying them for long periods of time all contact with and knowledge of those in the world outside. Perhaps some day we will come to realize that there is a psychological moment for the release of almost every prisoner if only on parole. So, too, the punishment which is inflicted by the penitentiary will come to be measured not merely by the physical but by the mental suffering that it occasions. We will even come to realize the strain on adult men and women who with habits already formed and senses already stimulated, are denied the right to all expression. We will still punish as we should but we will come to recognize the facts of biology and of psychology.

Lawlessness in America and Our European Critics

There is altogether too great a willingness on the part of the American to believe and an almost fiendish joy on the part of many of our foreign critics in their belief that never before was there so much crime in America, that today America is the most lawless of all of the civilized nations of earth, and that the city of Chicago is the most lawless of our large municipalities. In regard to this supposed increase in crime it is sufficient to state that the same complaint has been made in America in every decade of the past and whether relatively speaking we are more criminal than we were before or more criminal than our European cousins, we have no means of knowing since it is only very recently that any reliable criminal statistics have been attempted to be kept either in America or in Europe. If,

too, we are lawless perhaps that very lawlessness is due to our very democracy, to our very newness and to our very liberality towards the very peoples of Europe who are now becoming our severest critics. There can be no doubt that a very large amount of our crime is to be found among the first generation of the foreign born, who find it difficult to adapt themselves and at the same time both to the customs of their non-English speaking parents and to those of the English-speaking world around them, and who only too often and on account of the poverty of those parents, have been crowded into the most undesirable portions of our great cities.

Democracy and Crime

No one, indeed, has the right to condemn America without understanding America and the problem which is hers and which our whole souled democracy has assumed. In the city of Chicago, two-thirds of the population are either foreign born, or the children of the foreign born, and a vast amount of the crime of Chicago is found among these children. Europe should be the last to criticize us. Upon the Bartholdy statute is the inscription:

"Give me your tired, your poor,
Your huddled masses yearning to breathe free,
The wretched refuse of your teeming shore,
Send these, the homeless, tempest tossed, to me;
I lift my lamp beside the golden door."

America is not merely a nation but a nation of nations, and it is absurd to compare Chicago or New York with the city of London or to compare America with any foreign nation. In London there is a homogeneous population with a common history, a common tradition and, in a large measure, a common religion of a thousand years. In America, and especially in Chicago and New York, are to be found the representatives of every religion and every nationality on the face of the globe, many of whom have been at war one with another during the centuries. Chicago perhaps is the greatest melting pot in the world. Not only is it the meeting place of the east and of the west, of the north and of the south, but two-thirds of its population were born on foreign shores or are the children of the newly arrived immigrant. It, too, has a difficult negro problem which confronts no city of the old world. There are reasons why there are more murders and assaults and more race and gang conflicts in Chicago than there are in any European capital. In Europe, the races

are segregated into nations and states and principalities. In Europe, race conflicts take the form of wars; in America, they constitute breaches of the peace and criminal offenses; they take the form of gang murders and assaults and they come into the criminal courts. The government of London, also, and the political structure of London are the growth of centuries.

The Temptation That Opportunity Brings

Perhaps, indeed, we are too much surprised and dismayed at the prevalence of crime that is among us. Such a prevalence might only have been expected and perhaps was inevitable. It has been said that virtue without temptation is not virtue but merely an hypothesis. Certainly the more of temptation that there is the more of crime and of sin there will be. Perhaps the more of democracy and seeming equality that there is, the more crime there will be. In primitive communities and until the advent of the automobile there was but little temptation for crime; there was little that the child could pilfer. Today in our great cities the child sees displayed in vast department stores a prodigious wealth of playthings and jewelry and of all of the things that can allure him and the temptation is not only very great but the opportunity for theft is everywhere to be found. The rapid growth of our great cities, our restless democracy and our doctrines of equality have brought about a social and an industrial competition even among the children of the poor. One child wants what the other child has. He wants to dress as well, to enjoy life as he sees it to the same extent and the temptation to robbery and thievery and embezzlement is very great.

In Europe the children of the poor are taught in the churches and the schools "to order themselves reverently to all of their betters and to learn and labor truly to do their duty in that sphere of life in which it shall please God to call them." Here in America we recognize no class distinctions. As far as is possible the field of social and industrial and political opportunity is thrown open to all. Here, boys and girls are encouraged not to stay in but to get out of their spheres. Here is hope and opportunity and where there is hope and opportunity, there is always certain to be a large measure of restlessness and discontent among those who are handicapped or those who fail. Where there is restlessness and discontent there is liable to be crime. Perhaps there is more crime in America than in Europe, but if so, it is the result of our very democracy, and though we deplore its existence there are still some of us who prefer America with all

of its crime but with all of its hope and all of its opportunity and democracy, to Europe, even if relatively crime free (and of this we have serious doubts) with all of its class distinctions, all of its hopelessness and all of its despair.

The Crime of Chicago Is Much Exaggerated

But even in America itself there is much misrepresentation and much misstatement of the facts. Chicago, for instance, has been quite generally advertised as the murder capital of the United States, when as a matter of fact and in the year 1932, it occupied the forty-fifth place in the list of American cities and, if it had not been for its comparatively large negro population and the other peculiar conditions which surrounded it, it would have been much lower down on the list. As it is, in 1932, its homicide rate was 12.8 per every 100,000 of its population while that of Memphis, Tennessee, was 54.2; that of Lexington, Kentucky, 53; that of Miami, Florida, 35.9; that of Washington, D. C., 22; and that of Gary, Indiana, 22. We have not space to tabulate the records of the other cities. Suffice it to say that forty-five cities had a higher homicide rate than had Chicago and, in addition to her negro problem, we must bear in mind the fact that Chicago is a city of forty nationalities and, above all, that to it have come of recent years and in large and increasing numbers an immigration from southeastern Europe which even in Europe itself has been noticeable for its criminal tendencies. It is not fair, indeed, to judge a city without realizing the problems that confront it. What is true of Chicago is true of Memphis, which according to the latest figures is supposedly the murder capital of the United States and has a homicide rate of 54 per 100,000. On its face this record seems to be unaccountable. Yet if we will look into the facts we will discover that not only has Memphis for a long time been known as "the good Samaritan of the Mississippi River," that it is the only city within a large radius that has any hospital facilities, and to it are sent the sick and wounded from a large territory whose deaths if they occur there are charged against it in the records and that, like Chicago, it is a great railroad and steamboat center in which the transients of a vast area congregate but that, like Chicago, and even to a greater extent than Chicago, it is confronted with the negro problem which is always acute in the city where the negro, who as a rule has been plantation bred, is out of place and ill adjusted. Although, indeed, the negroes of Memphis constitute but one-half of the population, a recent survey which was conducted by the American Institute of Criminal Law and

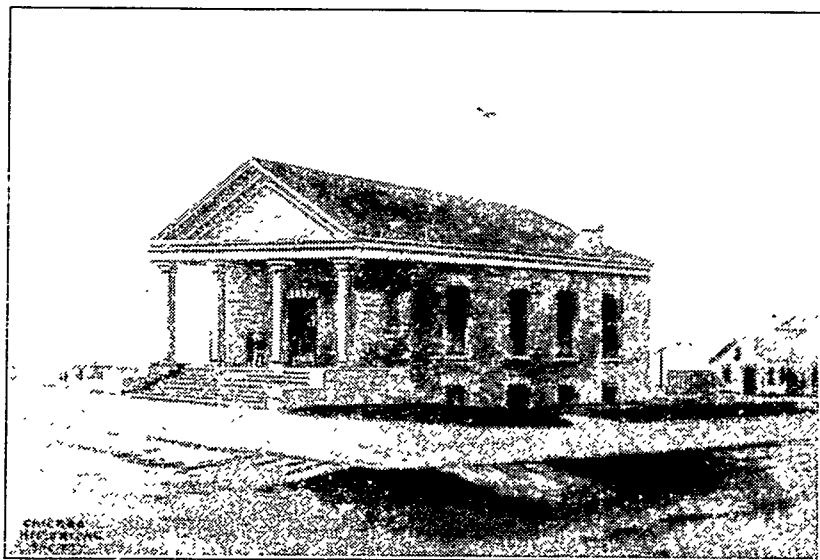
Criminology disclosed the fact that 85 per cent of the murders were committed by them. We believe, indeed, that there can be no doubt that it is to this negro problem that the high murder rates of Memphis, Tennessee; Lexington, Kentucky; Little Rock, Arkansas; Birmingham, Alabama; Atlanta, Georgia; and even of Washington, D. C., can be attributed. Certainly, it tends to add to the crime rate of Chicago. The high murder rate in Gary, Indiana, we believe, is largely attributable to its Mexican laborers, who were unwisely brought there to work in the steel mills. In the cities the negro is out of place and out of his element. On account of his poverty he is necessarily crowded into the most undesirable quarters and has little guidance from the white man. Above all, he belongs to a child and an undeveloped race. He has the desires and the appetites and the passions of a man but the mind of a child and by far the greater number of the murders which are committed by him are crimes of sudden temptation or of passion and arise out of sexual jealousy. The child acts upon the impulse of the moment and is reckless of consequence. It is not fair to compare our American cities which have these problems to face with the cities of Europe or even of our own country which have none of them.

Chicago's Peculiar Problems

There is, of course, much crime in Chicago but in the fact that of all our American cities she has been the most willing to acknowledge its existence the chief hope for the future lies. Even if there has been crime in her midst there has been self-sacrifice and altruism. Perhaps her chief defect has lain in the fact that she is too young and has grown too fast for her legal and social machinery to keep pace with her growth in population and with her industrial development. At the beginning of this century of progress her population was 4,470 and now it is three and a half millions. "Wherever the carcass is there will the eagles be gathered together." In Chicago there is the accumulated wealth of the fourth largest city of the world. The payrolls and the bank deposits of a small town furnish but little opportunity for or hope of profit to the robber and to the plunderer. Those of Chicago, however, mount up into the billions of dollars. In 1927 Chicago's bank clearings reached the enormous sum of \$35,958,216,000.00.

The Real Chicago

The historian and the criminologist, indeed, is lacking both in honesty and in scientific perspective, who looks only at Chicago's



Cook County Court House and County Building. Erected in 1836. Destroyed in Chicago Fire. Courtesy of Chicago Historical Society.

tabulated crime record and pays no attention to her altruistic endeavor and to the things which cannot be tabulated and which, not being sensational, do not furnish attractive headlines and are not therefore as a rule chronicled in the newspapers. Crime, indeed, is but the symptom of a social disease and of a false social philosophy and the eradication of that disease and of its contagion and the uprooting of that philosophy is of much more importance than the attempted punishment of a few of its addicts and devotees. Much more important than the detection and punishment of the criminal is the seeking out and the removal of the causes of crime, and chief among these causes are the influences of sickness, of poverty, of heredity, of environment and of social displacement. In no city of the world has this been more fully realized than in the city of Chicago, and in no city of the world has there been a higher public spirit and a loftier and more persistent and more intelligent altruism. Chicago, indeed, has failed not because of her lack of conscience and of endeavor but on account of the tremendous difficulties with which she has been confronted and the peculiar problem that has been hers. In no other city has there been a more liberal contribution for the needs of the destitute and of the unemployed. In no other city are the public and private charities better financed and better organized and inte-

grated. In no city of the world has there been such a lavish expenditure for public education, for public parks and for public playgrounds. In no other American city has there been such a self-sacrificing effort to study and minister to the needs of the wanderer and of the immigrant. The Hull House of Chicago is the mother and the exemplar of the social and the neighborhood settlements of America and in Chicago it has many companions. The Union League Club of Chicago, a leader among the Union League Clubs of America, makes the maintenance of boys' clubs in the less privileged areas one of its chief and most important activities. It was in Chicago that Judge Harry Olson, in 1909, Chief Justice of the Municipal Court, and Doctor William Healy, the physician, and psychologist, first called attention to the need of psychiatric laboratories in the criminal courts and who first brought into operation a distinction between the criminal and the feeble-minded and insane with criminal and un-social tendencies. It was he, perhaps, who first suggested the need of the custodial but not necessarily penal treatment and segregation of the latter class of persons. In no other city have the sick been more freely ministered unto—in the medical and dental colleges of the Northwestern University alone over 150,000 cases are treated every year and the Northwestern University is but one of many of Chicago's institutions. In no other city of America are great universities more persistently and intelligently engaged in the study of the problems of the poor and rendering more assistance to the under-privileged.

If, indeed, Chicago is a center of crime, it is certainly also a center of altruism, of hope and of achievement.