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THE PRISON LABOR PROBLEM: 1875-1900

BLAKE McKELVEY¹

The present uncertainty as to the effect of recent legislation on prison industries recalls the time when labor legislation first effectively invaded the field of prisons. This problem has been agitated from the first years of the Auburn system—a full century of conflict—but it was not until the late seventies that it emerged as a dominant factor in shaping prison developments. In prison history the decade following the Civil War had seen a great surge of prison reform: state boards for prison inspection, national and international prison associations, more than a dozen new prisons, and the first adult reformatories had all been established during those years. However, the forces activating these developments had considerably slackened in the mid-seventies. Except for Brockway, most of the strong personalities had dropped from the ranks, and the national association had discontinued its sessions. The housing problem, which had been constructively met by the progressive states, continued to vex keepers and legislators there, and more so elsewhere, but it surrendered first place to the labor problem.

The Dilemma of Prison Industry

The industrial revolution was already at full tilt in America. Two of its phases in particular exerted a large influence on prison developments: the substitution of machine industry for handicraft production, and the organization of the labor forces. Both of these had been in process for some time, and already the former had transformed prison industry and given it into the hands of contractors. Many of the prisons had become prosperous factories, at least from the point of view of the contractors, until the depression of 1873 destroyed their markets. Many of the reformers, who, a few years before, had bitterly attacked² the subversive influences of the contractors, now elaborately defended the system as better than idle prisons. The public, for its part, hesitated to trust the transient

¹Ph.D., Harvard University, 1933; Social Science Research Staff, U. of Chicago, 1934-5.

²Special Commission of State of Connecticut on Convict Labor, *Report* (1880), pp. 38-44. Summary of early investigations.

politicians in charge of the prisons with the management of large industries.

The question might have been tabled in this fashion had it not been for the constant growth of organized labor during a period of sharp political rivalry. It was one thing for the National Labor Party to insert an anti-contract clause in its platform, and for the Knights of Labor as well as the Federation of Organized Trades and Labor Unions to follow this lead;³ but it was quite another thing when the district assemblies of the Knights and the State Federations took up the agitation. State politicians had their ears to the ground in the early eighties, and they revealed some ability at *realpolitik* if not at penological statecraft.⁴

The industrialization of America was taking place chiefly in that belt of nine states reaching from Massachusetts to Illinois. Beginning with New York in 1864, all but two of these had state federations of labor by 1889, and Pennsylvania and Ohio, the two exceptions, were centers of the growing Knights of Labor with its energetic local and district assemblies.⁵ All except Indiana had, before 1887, set one or more special commissions to the investigation of prison labor, and as for the Hoosier state it remained until the nineties not only the most backward in prison reform but the least advanced industrially of the group. This old subterfuge, commissions for investigation, did not suffice. The parties in power in Illinois and New Jersey hearkened to this demand of the labor forces; while in the early eighties the Democrats, with the aid of many labor votes salvaged from the Greenback-Labor party, turned out the Republicans in Massachusetts, Pennsylvania, New York, and Ohio. The anti-contract agitation had been a prominent issue and the victors did not forget their pledges on this matter at least. The same party, capturing the White House, was able by 1887 to pass a law forbidding

³Powderley, T. V., *Thirty Years of Labor* (Columbus, Ohio, 1890), p. 245; Carroll, Mollie R., *Labor and Politics* (Cambridge, 1923), pp. 114-17; Fed. of Organized Trades and Labor Unions, *Convention Proceedings* (1881) p. 3: "(Resolved) . . . that convict or prison labor as applied to the contract system in several of the States is a species of slavery in its worst form; that it pauperizes labor, demoralizes the honest manufacturer, and degrades the very prisoner whom it employs."

⁴Powderley, *op. cit.*, pp. 303-15.

⁵Stanley, E., *History of the Illinois State Federation of Labor* (Chicago, 1913), pp. 561-66. New Jersey in 1879, Massachusetts in 1879-82, Illinois 1884, Indiana 1885, Connecticut 1887, Michigan 1889. Another fine illustration of the readiness of the politicians to throw a sop to labor was the rapid creation of the Bureaus of Labor Statistics; led off by Massachusetts in 1869, nineteen states established such bodies by 1887. Agitation for the federal bureau began in 1878 and succeeded in 1884. These bureaus were active in studying, among other problems, the prison labor problem.

the contracting of any federal criminals in any prison where they were housed.⁶

This legislative onslaught was shaking the foundations of the old American prison system of Lewis Dwight. In desperation the wardens and responsible reformers revived their national association and convened annual congresses where they could share their fears and debate possible solutions. They were all agreed that the prisons could not be administered properly without labor to fill the long hours of the convict's day. Many of them readily concluded that the labor leaders and politicians who would interfere with this were acting from evil motives; Franklin Sanborn, Fred Wines, and Francis Wayland denounced their opponents in impassioned speeches as selfish, even communistic.⁷

In the midst of this hubbub Zebulon Brockway proposed his piece-price scheme, proclaiming it as the long sought-for solution. Indeed from the point of view of the warden it had great advantages. It proposed to eliminate the disturbing influence of the contractor within prison walls by giving the officers full control over discipline of the convicts and management of the industries. On the other hand, it proposed that the warden contract with outside companies to supply machinery and thus free himself from the necessity of waiting on state appropriations. The scheme would make possible as large a diversification of industry as the warden saw fit or his managing ability allowed; further than this, it avoided the ill repute of the contract system and secured a rich market for the products.⁸

The new proposal received a varied reception. Many of the leaders hailed from states where the current of opinion disregarded labor protests, and they were naturally little inclined to encourage even a compromise of the existing system; thus Profesor Wayland from Connecticut and various leaders from Michigan were constant critics of the proposed plan. Michael Cassidy joined in this attack but from entirely opposite premises; his Philadelphia prison was still operating on the old solitary system, supplying handicraft labor, un-

⁶U. S. Commission of Labor, *Report* (1886), p. 368. In part 2 of this report all of the laws of the states on convict labor are quoted in full; see pp. 507-604. Commons and Associates, *History of Labor in U. S.* (Revised edition, N. Y., 1926), II, 439 ff. U. S. Department of Labor, *Bulletin No. 5*, July, 1896, pp. 471-78, abstract of laws since 1885 including U. S. law. The Democrats cooperated with the labor forces in all of these states. Even in Illinois, where their combined forces just failed to secure control, strikes and boycotts brought the manufacturers to their aid, and an anti-contract amendment to the state constitution was easily carried. See Beckner, E. R., *History of Labor Legislation in Illinois* (Chicago, 1929), pp. 133-44.

⁷National Prison Association, *Proceedings* (1883), pp. 25-45.

⁸N. P. A., *Proceedings* (1883), pp. 61-63.

affected in the least by either the necessity for self-support, the machine age, or the labor unions.⁹ On the other hand, leaders from Ohio, New Jersey, and Illinois were immediately attracted by Brockway's scheme, and politicians were plentiful who, after satisfying labor with laws against contractors, agreed to save the public taxes by permitting the prisons to earn a part of their expenses at piece-price agreements. In fact, of the states that abolished contracts, all but Pennsylvania very quickly reorganized their prison industries on this new plan.¹⁰

The prisons weathered the severest phase of the storm of labor agitation before the end of the eighties. The growing disharmony within labor ranks, the return of the Republicans to power, and the discovery of the magnitude of the bills of idle prisons brought a lull in anti-contract agitation. At the same time the weight of the reports of numerous special investigations and of the several state Labor Commissioners and finally in 1886 of the United States Labor Commissioner was all on the side of cautious, moderate regulation rather than complete abolition of contracts.¹¹ Most of these minimized the importance of prison labor as a competitor of the free worker. Carroll D. Wright, the United States Commissioner, made a special study of the quantity and value of products displaced and concluded that

⁹N. P. A., *Proceedings* (1884), pp. 204-25, reports the free-for-all discussion in which most of the leaders took sides.

¹⁰This reorganization was not always by act of the legislature:

New Jersey legislature passed an earlier act adopting the piece-price system only two months after an earlier act had abolished the contracts. Barnes, H. E., *A History of the Penal, Reformatory, and Correctional Institutions of the State of New Jersey* (Trenton, 1917), pp. 145-48.

New York adopted the piece-price system in an act of 1886. N. Y. Supt. Prisons, *Report* (1886), pp. 7-21.

Massachusetts adopted its piece-price law in 1888, just one year after its anti-contract law. Pettigrove, F. G., *Prisons of Massachusetts* (Boston, 1904), pp. 12-13.

The managers of the Ohio prison assumed the authority to introduce the new method almost immediately and this was not indorsed by the legislature for several years. Board Directors of the Ohio Penitentiary, *Report* (1884), pp. 471-78.

Illinois failed to formulate a new system to replace the one abolished and the officers renewed the old contracts as piece-price agreements. Com. of Illinois State Penitentiary, *Report* (1890), p. 6.

Maryland likewise turned to the new system without any legislative direction, and solely on the belief of its new warden, J. F. Weyler, that this was the best system for profits. Md. Penitentiary Penal Commission, *Report* (1913).

¹¹The friction between the Knights and the reorganized A. F. of L. united with the set-back occasioned by the Haymarket riots and the failure of the eight-hour campaigns to decrease the influence of labor in politics. The attempt to run regular labor candidates in a few of the states may have had something to do with the return of the Republicans to power. For a full review of the reports of the several investigations, see U. S. Com. Labor, "Convict Labor", *Report* (1886), pp. 307-68; and Wright, C. D., *Hand Labor in Prisons* (1887).

\$28,753,999, the total product of 45,277 convicts in 1885, was a very small figure when compared with \$5,369,579,191 produced by 2,732,595 free laborers five years before.¹² This rapidly became a major argument and was not seriously challenged until the end of the century. It was asserted with conviction by General Brinkerhoff before the national conference of charity in 1887; John S. Perry, a contractor in New York prisons, accepted it as a vindication of his long and energetic public defense of prison industry.¹³

But the labor forces were not the only interests that had to be pacified. It has been seriously questioned whether the agitation from the beginning was not simply a cleverly devised campaign on the part of the industrial competitors of the contractors to destroy the latter's advantages.¹⁴ At all events the labor attack had no sooner been checked than the manufacturers rallied to the cause and formed their National Anti-Convict Contract Association. Presidents of wagon factories, shoe, furniture, and stove companies, chiefly from Wisconsin, Michigan, Iowa, and Missouri—all at the time lacking anti-contract laws—gathered in Chicago in 1886 to hold their convention. Here they frankly unveiled their interest in eliminating the unfair competition of their rivals; they voted to send their president, Colonel W. T. Lewis, on a lecture tour to urge their cause.¹⁵

Several schemes were proposed in these years that were designed chiefly to curb prison competition. One that made considerable headway was the requirement that all products be stamped "prison made."¹⁶ Another proposal revealed a curious assortment of motives; it suggested that prisoners should be employed exclusively at labor with hand tools and man power machinery. Carroll D. Wright was especially active in agitating this solution which he considered to be the secret of the success of the Cherry Hill penitentiary. At his prompting, Massachusetts adopted a modified form of the plan by

¹²U. S. Com. of Labor, *op. cit.* (1886), p. 295, and tables on pp. 192-99.

¹³National Conference Char. and Corr., *Proceedings* (1887), pp. 106-12; (1884), pp. 53-56.

¹⁴Klein, P., *Prison Methods in N. Y. State* (N. Y., 1920), p. 296: "As the form of production developed more into the modern factory system . . . the manufacturer was the one who felt the competition of prison labor rather than the individual working man. The opposition to prison labor proceeded, therefore, first from free labor but continued long after the interests of the individual artisan had become secondary. When manufacturers took up the fight they presented their own case in terms of free labor, thus obtaining the support of workingmen and the benefit of a more altruistic light."

¹⁵National Anti-Convict Contract Assn., *Proceedings of Chicago Convention* (ed. by L. D. Mansfield, Chicago, 1886).

¹⁶U. S. Com. of Labor, *op. cit.* (1886), pp. 386-87; Pa. Penal Commission, *Employment and Compensation of Prisoners in Pennsylvania* (1915), pp. 59-63. Pennsylvania adopted such a law in 1883.

forbidding the purchase of new machinery after 1887, and this remained a thorn in the side of her prison administrators for many years.¹⁷ New York tried the idea for one fatal year in 1888; prohibiting all manufacture by motive power, she succeeded in disjuncting her entire prison system until a new law righted it. Heedless of this lesson, Pennsylvania politicians sold their state's penological birth-right for labor votes in 1897 by adopting an extreme form of this scheme.¹⁸ This reactionary policy combined the desire to retard prison production with the more general wish to check the speed of mechanization in America; it revived the old notion that the prisoner might thus learn a useful trade. But, if Americans had not yet fully accepted the gospel of large scale production, it was hard on the prisons selected to experiment with Gandhi's theory.¹⁹

Another proposal designed to limit the competitive range of prison industries urged the prohibition of inter-state traffic in such goods. The O'Neill Bill aiming at this end was introduced and almost carried through Congress in 1888. The wardens who gathered that year in Boston were greatly disturbed over the prospect; they passed a resolution recommending a special convention of prison officers and state legislators to determine a just solution of the difficult problem. But this revolutionary scheme for national planning was not tested until the Richmond Convention met in 1930 to face the modern crisis. The decline of the labor influence in the late eighties and the disappearance of the anti-contract association, together with the defeat of the Democrats and other factors, sufficed to stave off immediate legislation. Nevertheless, the bill remained for many years a constant threat of an evil day ahead.²⁰

Contending Interests in the States

While the fury of the storm of labor legislation relented somewhat in most of the states toward the close of the decade, in New York it continued unabated. Situated at the center of much of labor's political agitation, this state experienced from the first the full gamut of forces playing around the problem. It devised the legislation that formed the basis for much of the discussion and practice of its neighbors in succeeding years.

The acute nature of the problem in the Empire State was due

¹⁷Mass. Supt. Prisons, *Report* (1890), p. 45.

¹⁸N. Y. Supt. Prisons, *Report* (1889), p. 16; Pa. Penal Commission, *Employment of Prisoners* (1915), pp. 59-63.

¹⁹*Ohio Bulletin Char. and Corr.* (Sept., 1902), p. 25.

²⁰N. P. A., *Proceedings* (1888), pp. 50 ff.

in part to its industrial environment. But the remarkable efficiency of prison industries after the creation of the all-powerful superintendent in 1877 aggravated the situation. Lewis Pilsbury's success in cutting prison costs to one-fifth of their earlier average entailed the development of extensive industries, and many competitors began to protest.²¹ Governor Alonzo B. Cornell expressed this growing hostility in his message of 1880; the following year the legislature sent a committee to investigate industrial conditions at Sing Sing.²² As its report favored the contract system, the legislature hesitated to meddle with the ticklish problem, and referred it to the people. Amidst a confusion of issues the contract system was condemned by a small majority. The Republican legislature, however, refused to act. Nevertheless that astute politician, David B. Hill, who succeeded Cleveland as Governor, attacked the problem with energy; insisting that the popular will be granted and that "unnecessary interference with outside industrial interests" be eliminated.²³ The constitution prohibited new contracts but it failed to provide an alternative system. Fortunately for the prisons, as well as for the state treasury, most of the contracts extended ahead several years, but gradually, as they expired, the situation became critical. Two years passed before the legislature created the Prison Labor Reform Commission to plan a new system and, in the meantime, authorized temporary piece-price agreements. These measures came none too soon, for unemployment at Auburn was desperate, and Brockway at Elmira was almost at his wit's end.²⁴ The Commission made a careful study and concluded that the piece-price system was highly admirable, but, as popular opposition must be met, a special effort to diversify the industry would be necessary, and arrangements should be made for sale to public and charitable institutions.²⁵ This last suggestion was an early expression of the idea that later developed into the public-use system, but at the time it appeared as an effort to dodge the issue. Disregard-

²¹Klein, *N. Y. Prisons*, pp. 336-68; *N. Y. Supt. Prisons, Report* (1879). The cost was reduced from \$317,000 in 1876 to \$67,800 in 1878.

²²*N. Y. Governors' Messages* (ed. by C. Z. Lincoln, Albany, 1909), VII, 424-25: "The state prison has been nearly self-supporting the past year . . . it has been accomplished at some detriment to certain mechanical interests . . . Many intelligent and industrious mechanics represent that great hardship proceeds from this cause. While it is desirable that prisons should be as little burdensome as possible, care should be taken to avoid all unnecessary interference with industrial interests." *N. Y. Assembly Documents* (1882), No. 120, pp. 1-5.

²³*N. Y. Governors' Messages*, VIII, 12, 165; *Political and Governmental History of N. Y.* (Syracuse, 1922), III, 322.

²⁴*N. Y. Supt. of Prisons, Report* (1886), pp. 7-21.

²⁵*N. Y. Senate Documents* (1887), No. 36, p. 13.

ing this moderate advice, the legislature adopted the Yates Law prohibiting contracts of any kind and abolishing all manufacture that used motive power machinery. Only production by hand labor was allowed, and then only for the use of state institutions.²⁶ Immediately the recent surplusses were exchanged for enormous deficits, and the superintendent protested against this destruction not only of the industries but of the whole prison discipline.²⁷ Only in Elmira was it made an occasion for constructive measures.

The state finally became aware that the problem was not a simple matter to be left in the hands of greedy interests. Professor Charles V. Collins of Cornell, formerly associated with Brockway at Elmira, drafted the bill which was introduced by Fassett in 1889 to become the high water mark of prison labor legislation of the century.²⁸ The new law sanctioned both the piece-price and state account systems, but provided that no industry should employ more than five per cent of the number working at that occupation in the state; a few industries were further restricted to 100 laborers and required to produce for state use only. Of larger significance, the law definitely abandoned the idea that industry should be organized primarily for self-support and accepted the reformatory motive. The convicts were to be divided into three classes: those with good prospects of reformation were to be instructed in trade schools and employed at these trades with no idea of state profit; the repeaters who were at least good prisoners and possibly reformable were to be assigned to industries at which they could find a living after discharge and in the meantime earn their keep; the desperate criminals were to be rewarded with all the drudgery and menial labor rather than the choice jobs which their long terms and professional standing had formerly secured them. When in addition a wage not to exceed one-tenth of the earnings was to be provided for meritorious prisoners, New York had indeed adopted a law worthy of a great state.²⁹

Unfortunately the state and its officers were poorly prepared to administer so good a law. Neither the abilities of the officers nor the structural equipment of the prisons permitted the genuine classification called for. Meanwhile many industries lobbied for the favored protection granted to shoes and stove hollow-ware at which only 100

²⁶N. Y. Supt. of Prisons, *Report* (1888), p. 16.

²⁷*Ibid.* (1889), p. 5: "(the law of 1888) produced an unprecedented death rate, and unequalled numerical lapses of convicts into insanity" and a deficit of \$369,274, which was larger than the total deficit of ten previous years.

²⁸*Papers in Penology* (Elmira, 1891), edited by the Editor of The Summary, Eugene Smith, "The Fassett Law," pp. 85 ff.

²⁹*Ibid.*, pp. 93-108; N. Y. Supt. of Prisons, *Report* (1889), p. 16.

prisoners could be employed. Impatient with the persistence of the problem, and possibly stimulated by the rigors of the depression of 1893, the Constitutional Convention of 1894 advanced an amendment which was shortly adopted fixing 1897 for the end of all forms of contract labor. A Prison Commission was created to organize a new system on the state-use principle, already partially applied, and its jurisdiction was extended over the county penitentiaries which had so long escaped state interference. A law of 1896 carried out these constitutional provisions and required the several state departments to purchase from the prisons as long as their needs could adequately be supplied.³⁰

The Empire State thus finally evolved a system with great possibilities. It excluded the prisons from the haggling of the market place but opened a rich, if unexplored, field for their enterprise. Yet it was no fool-proof device, and, in succeeding years, while the state prisons were able to carry on, for the time at least, fairly satisfactory industrial programs, the county penitentiaries, with their former industrial efficiency blasted and with no law giving them a preemption on any market, fell back into the class of mammoth city jails, condemning their inmates to noxious idleness. In fact when the New York Prison Association made a comprehensive survey in 1900 it found a discouraging industrial lassitude, incompatible with any purpose of reformation, permeating the entire prison system of the state; and only the adult reformatories were avoiding its vicious results by other devices.³¹

New York's pioneer legislation had been observed with interest by her neighbors, but only Massachusetts was ready to profit from it. The developments in the Bay State were less complex in their political aspects but hardly less so as far as the prisons were concerned. After repeated reverses the anti-contract forces finally secured a law in 1887 creating a Superintendent of Prisons to administer the industries at state account. Unfortunately, by failing to provide the necessary credit, and by prohibiting the acquisition of new machinery, it prevented any efficient reorganization, and at the same time, by banning the contractors, it wiped out their over-time payments which had been such an important incentive to efficient labor in the old days. Several of these mistakes were corrected in the following year as a

³⁰N. Y. Supt. of Prisons, *Report* (1896), pp. 22-24; Klein, *op. cit.*, pp. 263-66.

³¹N. Y. P. A., "Report of Special Investigation Commission", *N. Y. Senate Doc.* (1900), No. 32, pp. 53-57. Onondaga County Penitentiary made efforts to employ its prisoners at road building and stone quarrying, but this was the only encouraging policy discovered.

new law permitted each prison to make piece-price agreements, but this in turn undermined the authority of the superintendent and made central management difficult. The disheartening unemployment was gradually eliminated, but repeated recommendations for a wage system to revive the interest of the convicts in their labor roused no response.³²

After several more or less unsatisfactory years with this system the General Court was again persuaded to follow the example of New York. All contracts were abolished in 1897, and a state-use system was organized by the superintendent, now given larger powers. An efficient administration was begun and, while Massachusetts never adopted an elaborate system of labor classification, her prison equipment was such that she achieved its object more nearly than did New York. The three year minimum for state prison commitment generally excluded all but the hardened convicts from Charlestown; the likely candidates for reformation were sent to Concord, and, when the existing piece-price agreements expired, they were given trade instruction; the county houses of correction took care of the remainder and provided fair labor conditions. At the close of the century the authorities were looking ahead to large developments of outdoor labor, and while Pettigrove's proposal, that prison labor be used to build a canal across Cape Cod, was not followed, the companion proposal that a state camp for inebriates be opened on a large tract of waste land was carried into effect in 1902.³³

When in 1883 the Democrats captured the Republican stronghold in Pennsylvania they hastened to reward their labor allies with an anti-contract law. In this state where the district assemblies of the Knights were so strong, no politician could propose to dodge the law by piece-price agreements, but, as the Eastern penitentiary had long depended on handicraft industry at state account and as the Western prison had long term contracts, the effect was not immediately disastrous. A complex system of wage payments was instituted to make the best of the existing industry, and the Democrats, again in power in 1891, demonstrated their liberalism by enacting an eight-hour limit for the convict laborer. Two parties could play this game, and in 1897 some Republicans paid for their mess of pottage by pushing through the devastating Muehlbronner Act abolishing the

³²Pettigrove, *Prisons of Massachusetts*, pp. 12-13; Mass. Supt. of Prisons, *Report* (1890), p. 45; Mass. Prison Com., *Report* (1886), p. 21; also later ones.

³³Mass. Pris. Com., *Report* (1898), pp. 115-17; also (1903), *passim*.; Mass. Supt. of Prisons, *Report of . . . on Various Methods of Employing Prisoners* (1898), pp. 8-50.

use of power machinery in the manufacture of goods produced elsewhere in the state and seriously limiting the number of men employed at any one industry in each prison. This crippled the industry in the Eastern as well as the Western penitentiary and only the reformatory, already turning to trade schools and farming, escaped serious injury. The act made a farce of prison labor in Pennsylvania for the next thirty years and did more than any other factor to degrade the two great penitentiaries of the Keystone State from the first rank of American prisons.³⁴

The other states did not find it necessary to follow these leaders until the beginning of the next century. New Jersey, Ohio, and Illinois had all abolished contracts in the early eighties, but the administrative authorities had almost immediately turned to the piece-price compromise and were able to continue their fairly prosperous industries. In Illinois it was not until the radical Democrat, John T. Altgeld, became governor that conscientious effort was made to put into effect the intent of the amendment of 1886. State account industries were introduced, and by the end of his term over half of the prisoners were laboring at these. Nevertheless his Republican successor reversed the policy, charged the enormous outlays for machinery to Democratic graft and returned to piece-price agreements.³⁵ Gradually the labor forces regained their influence, both here and in Ohio, and with the aid of outside merchants they were able, in the early years of the next century, to exclude prison products from the open market.³⁶ Indiana, in part due to the inefficiency of her prison industries, escaped the labor attack of the eighties. Accordingly in 1888, when for the first time her prisons reported self-support, it was an occasion for public congratulation, and it was not until the last year of the century that a law was finally passed calling for the gradual abolition of contracts.³⁷

That Michigan, rapidly becoming industrialized, escaped the fury of labor legislation was partially a result of the fact that her major

³⁴Barnes, *Pennsylvania Prisons*, pp. 249-53. A full account but fails to correlate it with labor politics. Some industries limited to 5% of convicts, others to 10%; none could employ any more than 20%. This applied to each prison so that no specialization was possible.

³⁵Bogart, E. L., and Thomson, *The Industrial State*, (Springfield, Ill., 1920), pp. 183-87; Ill. State Penitentiary Commission, *Report* (1900), pp. 7-10.

³⁶*Ohio Bulletin Char. and Corr.* (1902), pp. 15-25; Becknar, *Labor Legislation in Illinois*, pp. 140-44, shows that the New York example played an important part in spite of an investigation that brought back a very hostile report of its practice.

³⁷Indiana State Pris. So., *Report* (1888), p. 10; Indiana State Prison, *Report* (1900), p. 5.

prisons were already operating largely on public account.³⁸ The Detroit House of Correction continued to pay its full expenses under Superintendent Nickolson, but as in the days of Brockway it operated all of its industries without any outside interference. Meanwhile Jackson prison was extending its mining activities into additional state owned coal lands and experimenting with hog raising and trucking on its sixty-five acre lot. When in the nineties an attack was again made on the contractors, Warden Otis Fuller was able to report to the National Prison Congress that he had successfully defended the industries of Ionia against the assault of outside companies, making no mention of labor unions.³⁹

The anti-contract agitation did not affect the labor of prisoners in all parts of the country, and yet it had some surprising reverberations. In the South the tendency to restrict and even to abolish the lease system and to substitute farming and road labor was coincident but entirely independent of the Northern agitation; yet there were serious labor troubles in Kentucky and especially in Tennessee over prison labor, and in the latter violent outbreaks persuaded the state to terminate its coal lease in the early nineties.⁴⁰ Meanwhile in the West the anti-contract law of the federal government, prohibiting such employment for federal convicts, practically eliminated industry from the territorial prisons. When new states were formed here this provision was usually embedded in their constitutions, and indeed not a prison in the Rocky Mountain area provided any organized labor for its inmates, aside from a little stone quarrying, until the development of the honor road camps in the present century.

Labor problems however were rife in three Western prisons. The lease of Nebraska's prison in 1877 was bitterly assailed until replaced by contracts in the nineties. Oregon, on the other hand, abandoned state-account industries and in 1895 leased its penitentiary. California's earlier action prohibiting new contracts after 1882 was more to be expected in view of its active labor forces, and it affords a clear example of the speed with which an organized force can get results in a young state. This wide-spreading activity of the anti-contract agitation suggested the expanding horizon of the North-

³⁸N. P. A., *Proceedings* (1885), pp. 217-18. Michigan did not fully escape the agitation but the Republican governor vetoed the act of 1884, passed by the Democrats and labor sympathizers.

³⁹Michigan State Prison, *Report* (1880), pp. 10-14; N. P. A., *Proceedings* (1897), pp. 32-34.

⁴⁰Moore, J. T., *Tennessee the Volunteer State* (Chicago, 1923), I:276.

eastern prison system, but it was not until the next century that the development became significant.⁴¹

A few protests occurred in such border states as West Virginia, Missouri, and Kansas, but on the whole their prisons as they developed profitable industries were praised rather than criticized. In fact practically everybody rejoiced in Missouri and Kansas when their respective prisons began in the early eighties to operate near-by coal mines, thus gradually becoming sources of profit to their states. Protests that arose were brushed aside by the authorities. Similarly in West Virginia the governor pointed out that if labor should insist that the profitable contracts at the prison be abandoned, the alternative would be either work on the public highways or some lease system as in the South.⁴²

Meanwhile Minnesota was doing some constructive experimenting of its own. When its law of 1889 made one half of the prisoners available to contractors an agreement was made with the recently organized Minnesota Thresher Company to produce its binder twine. It was a new thing for a state prison to get in on the ground floor of an expanding industry with a great market in the community. Whatever labor problems might have developed were forestalled as the state took this industry over in the early nineties and established the model state-account system of the nation. Producing and selling cheap in an almost unlimited market to the benefit of the chief portion of its electorate, and at the same time paying its prison expenses, Minnesota had an unassailable system.⁴³

The non-industrial states of the North largely escaped this problem. Wisconsin gave it no attention until the depression of 1893 caused its contractor to lay off most of his laborers and roused the authorities to the danger of dependence on such a system. An investigation was made and a change to the New York system proposed, but returning prosperity solved the problem, and it was not until 1907 that a new system was adopted, patterned after Minnesota,

⁴¹McKelvey, B., "Penology in the Westward Movement" *The Pacific Historical Review*, December, 1933.

⁴²*Mo. Gov. Messages*, vol. VI. Gov. J. S. Phelps (1881), pp. 85-86: coal mining started in 1877 and by 1881 it practically paid the expenses of the prison; pp. 316-22; Gov. T. T. Crittenden reports clear profit of \$5000 in 1883. *Kansas State Penitentiary* (1880), pp. 6-8: coal shaft started, 1879; (1886), pp. 3-7: it pays entire expense with income from other industries and board from United States and New Mexico convicts. *West Virginia Penitentiary* (1894/96): prison reports a surplus over all expenses and contrasts this with deficits as \$100,000 in New Jersey.

⁴³American Prison Association, *Proceedings* (1912), pp. 369-74. The National Prison Association changed its name in 1908 to the American Prison Association.

however, rather than New York.⁴⁴ In Iowa, aside from the successful action of button companies to secure protection from prison competition, little attempt was made to regulate the use of prison labor.⁴⁵

Except in Massachusetts none of the New England prisons experienced any hardships due to the anti-contract agitation. As they were able, by virtue of their good discipline, to attract reasonable bids for their labor, most of them contrived to be fairly self-supporting. The authorities and reformers in Connecticut worried a good deal over the danger of legislation, but none came. Maine, however, seriously hampered her prison industry, carried on for many years at state account, by limiting the number to be employed at any one trade to twenty per cent of the convicts. The sole industry, a wagon manufacture, was seriously handicapped until the warden hit upon the trick of dividing the industry into several trades. The prison, however, never regained its old prosperity, for, symbolical of most prisons, it was putting its money on the horse in a railroad era.⁴⁶

New Function of Prison Industry

The controlling factors in the convict labor problem of the nineties were thus local rather than national in character. Only in such states as New York, Pennsylvania, and Massachusetts, were the interests sufficiently organized to secure their full desires, and it was fortunate that these states were able to bear the burdens of non-productive prisons. The neat penological rationalization of the legislation in these states attracted both the interests and the reformers throughout the country; gradually the old American tradition of prisons supported by the labor of their inmates gave place to a new standard of convicts working to learn trades but avoiding the public markets. If its negative aspects were most prominent, both in the causes and the results, the new industrial program nevertheless contributed much to the spread of the reformatory function of labor.

Organized labor, strong throughout the North in the mid-eighties, lost much of its political influence after the decline of the Knights. Whatever its defects for the economic struggle, this national body exerted through its state and district assemblies a powerful influence on state politicians. It not only claimed to fight the whole cause of labor, but it was quick in this instance to defend the welfare

⁴⁴Wisconsin Board of Control, *2nd Report* (1893-94), p. 13; Wisconsin Prison Labor Commission, *Report of* (1897), pp. 22-27.

⁴⁵Briggs, J. E., *History of Social Legislation in Iowa* (Iowa City, 1915), pp. 210-13.

⁴⁶National Conference Char. and Corr., *Proceedings* (1893), pp. 170-71.

of a small portion of its members.⁴⁷ When its strength declined, this plank of its platform was eagerly taken over by the rising Federation of Labor. The cautious political activity of the subsidiary state federations prevented this body from attaining the influence of its predecessor over prison developments. Nevertheless the continued growth of the power of the national federation, and its unswerving adherence to the attack on penal servitude, did much to prepare public opinion and especially the politicians for the new function of prison industry.⁴⁸

The Republicans as well as the Democrats began to see the light towards the end of the century. This became evident in a series of national investigations. Carroll D. Wright, as Commissioner of Labor under Cleveland in 1886, had defended the contractor, but by 1896 he had advanced with the times and reported the existence of unfair competition. The final crystallization of the new standards appeared in the recommendations of the United States Industrial Commission of 1900 created by a Republican House. Its report strongly indorsed New York's recently elaborated state-use system; in fact twelve out of its thirteen resolutions urged the superiority of this system over all others. A considerable array of statistics revealed greater profits from the contracts, but the commission took a higher ground, asserting that "The most desirable system for employing convicts is one which provides primarily for the punishment and reformation of the prisoners and the least competition with free labor, and, secondarily, for the revenue of the State."⁴⁹ Both of these reports justified rather than complained of the decline in the earning capacities of the prisons, and they rejoiced in the comparative expansion of the public-account industry; in the later of these investigations even the piece-price system was frowned upon.

⁴⁷Beckner, *Illinois Labor Legislation*, p. 138, recounts how a couple hundred coopers of Chicago brought the entire influence of the state labor forces to their defence.

⁴⁸Carroll, *Labor in Politics*. pp. 114-16. Miss Carroll gives a list of the A. F. of L. resolutions on prison labor:

1881—Convict labor is a "species of slavery"; unfair competition.

1883—Prison products should be so labeled.

1897—Eight hour day, and production for state institutions only.

1899—No convict-made goods to be sold in the open market.

1891—Convicts should receive all earnings after costs.

⁴⁹House of Representatives Industrial Commission, *Prison Labor*, 56th Congress, 1st Session, Doc. 476, part 3, p. 11 and passim. See also, U. S. Department of Labor, *Special Bulletin No. 5 of . . . on Contract Labor* (1896), p. 446 and passim; p. 446: The total income in forty-one states in 1885 had been \$24,271,078 and this fell to such an extent that they reported only \$19,042,472 in 1895, while at the same time the number of convicts increased from 41,877 to 54,244 between these dates. The problem of comparison is complicated because the sum is the value of the goods, not of the work. U. S. Com. of Labor, "Convict Labor," *Report for 1905*.

The new theories did not always have clear sailing. These national reports showed an irresponsibility for state budgets that stood in sharp contrast with several state investigations. An Illinois commission, originally favorable to the New York plan, was frightened from it by a discovery of the failure of even the well organized administrative agencies of that state to secure employment for more than one-third of the state prisoners and for few of those in the counties; it was especially cautioned by the discouraging financial results.⁵⁰ Nevertheless the day of self-supporting prisons was passing, and the states were at the same time becoming accustomed to larger budgets. The recommendations of the Industrial Commission were to be widely quoted in following years.

The one resolution of this Commission which proposed definite action by Congress revived the old agitation for the restraint of inter-state traffic in prison made goods. The old O'Neill bill has been repeatedly agitated, but it had always been tabled. Several of the states had undertaken to secure the same end by laws regulating the importation of prison products from other states, requiring branding or an importer's license, or some such restraint.⁵¹ Congress itself forbade the importation of such goods from foreign countries. But the state laws were being attacked in the courts, and already the more extreme New York and Ohio laws had been set aside.⁵² The problem had a clear affinity with the regulation of the inter-state liquor traffic; the Industrial Commission favored a Wilson Act for prison labor instead of the complete federal prohibition of such commerce proposed by the O'Neill bill.⁵³ Three decades were to pass before Congress passed the Hawes-Cooper Bill, which was in effect a response to this earlier recommendation.

The prison labor problem had arrived at the zenith of its influence by the close of the century. While the aggressive activity of organized labor had turned to the economic field, politicians eager to attract votes still campaigned, and competing industrial interests were gaining a hearing. Only a few of the states had carried their legislation far enough to gain political stability, but already their measures were the center of agitation in many of the other states. Even

⁵⁰Beckner, *History of Labor Legislation in Ill.*, pp. 142-43.

⁵¹House Indus. Com., *op. cit.*, pp. 141-66, a complete summary of convict labor laws. New York and Ohio were the first in 1894, but Kentucky, Indiana, and Wisconsin followed in rapid succession, and Colorado shortly adopted a moderate law.

⁵²Ohio law set aside in *Arnold v. Yanders* (1897), 47 N. E. Reports, p. 50; and New York law in *People v. Hawkins* (1898) 51 N. E. Reports, p. 257.

⁵³House Indus. Com., *op. cit.*, pp. 15-16. The state decisions followed the reasoning of *Leslie v. Hardin* (1889), 125 U. S., pp. 100 ff. which had determined Congress to pass the Wilson Act to help the states carry out their liquor policies. The analogy was close.

the federal government had mounted the band wagon and was considering taking the driver's seat with a questionable federal police power.

The larger significance of the problem was just beginning to appear. Most of the states, escaping the rigors of the agitation, had been able by one means or another to provide employment for the large majority of their convicts, and, in spite of brief crises, the old system had been able to hold its own in their prisons. In Pennsylvania, New York, and to a lesser degree in Massachusetts, a new situation had developed; the major reliance of the disciplinarians could no longer be a good day's hard labor. This was fortunate for the reformatories; they were encouraged to develop to the full their trade schools, their military organizations, and all of the other features of their discipline which, in an earlier era, they might have abandoned as needs for economy urged self-support. The regular prisons in these states were in a quandary. The labor system in Pennsylvania had become a farce; in New York the lax administration supplied scarcely one-third of the convicts with work; in Massachusetts the prisoners were idling about antiquated machinery, and no officer pretended to maintain the old silent system.⁵⁴ Should the prisons adopt the reformatory methods and strive to provide a constructive associate life; should they study to provide conditions that would keep the convicts fairly contented and orderly; could they maintain obedience in the face of idleness by a return to brutal punishments—these were some of the questions that labor legislation was forcing on the attention of the authorities in 1900.

And today the states that escaped the issue when it was raised three decades ago, providing they have not solved its dilemma during the interim, will face it finally under the Hawes-Cooper Act. Our century has seen the successful application of two additional labor alternatives, the honor road camp, and the minimum security farm, but no state that has excluded its products from the public market can point to a satisfactory industrial activity in its prisons. The effect has been (and will continue to be) an encouragement to the development of convict activities of a reformatory character, either vocational or recreational—except in those prisons where the convicts have been surrendered to a desultory idleness.

⁵⁴Klein, *New York Prisons*, pp. 272-73: "Since that date (1896) there has been more idleness in state prisons and county penitentiaries than was known throughout the whole previous history of prison labor . . . (formerly) On the whole, however, contract labor and other similar forms, including the piece-price system, have been fairly well able to supply the necessary amount of labor." By comparison, the state-use system in vogue since 1897 has been a failure."