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THE RELATION OF JAILS TO COUNTY AND STATE

LOUIS N. ROBINSON

There is no dodging the fact that our local penal institutions (jails, workhouses, houses of correction, road camps and stockades), taken together constitute the most important as well as the most difficult problem of our system of penology. The total number of these institutions, as nearly as can be determined, is 3,459.¹ The number of prisoners committed to them under sentence during the first six months of 1923 was 145,422, or 86.6 per cent of all commitments.² I estimate the total number of commitments to these local institutions for the entire year 1923, at something over twice that figure, or approximately 300,000.

Joseph F. Fishman's definition of a jail makes it clear what the problem is. A jail, he says, is "An unbelievably filthy institution in which are confined men and women serving sentence for misdemeanors and crimes, and men and women not under sentence who are simply awaiting trial. With few exceptions, having no segregation of the unconvicted from the convicted, the well from the diseased, the youngest and most impressionable from the most degraded and hardened. Usually swarming with bedbugs, roaches, lice, and other vermin; has an odor of disinfectant and filth which is appalling; supports in complete idleness countless thousands of able bodied men and women, and generally affords ample time and opportunity to assure inmates a complete course in every kind of viciousness and crime. A melting pot in which the worst elements of the raw material in the criminal world are brought forth, blended and turned out in absolute perfection."³

Aside from the fact that houses of correction, workhouses, road camps, etc., do not contain untried prisoners and do usually make some effort to provide work for the prisoners, there is very little difference between these and the jail which he so properly defines. They are all local institutions and part of the self-same problem. All who have worked in the field of American penology have wrestled with this problem. Unfortunately, they have not conquered it. It remains a

¹*Prisoners* (Bureau of the Census, 1923), p. 3.

²*Ibid.*, page 22.

³*Crucibles of Crime* (New York: Cosmopolis Press, 1923), pp. 13-14.

thing of reproach in the eyes of foreign observers and a standing disgrace to American statecraft.

Mr. Fishman insists that his description applies to fully eighty-five per cent of these institutions. Be it remembered now that he was for many years the sole inspector of prisons for the United States Government and speaks with the authority that comes from describing what one has actually seen. Dr. Hastings H. Hart, who visits prisons on all possible occasions, agrees with this definition but would add several more counts to the terrible indictment which Fishman has written.

THE HUNDRED YEARS' WAR IN ENGLAND TO IMPROVE THE COUNTY JAILS

In 1922, Sidney and Beatrice Webb published a book, "English Prisons Under Local Government"⁴ which has not received, in this country, the attention which it deserves. Its importance for us lies in the fact that it affords us the opportunity of evaluating our experience and measuring our progress in dealing with this problem. As we all know, the central government of England took over the local jails in 1877. *It is not so well known, however, that this action was the culmination of an effort, spread over a century, of the central government to develop a decent standard of care in these self same local institutions.*

In reading this history of the one hundred years' war which the central government of England waged on conditions in the local jails, one is struck with the inevitableness of each step taken. Yet all history seems to be inevitable, an unbroken chain of cause and effect. Must we, in dealing with this problem of local institutions, follow in the footsteps of our English friends? Have we already started on the same road, and what station have we now reached? In the pages which follow, I shall attempt to answer these questions, first making clear what has been the course of events in England. My main reliance and guide in summarizing the history of the English jail has been this book by the Webbs, supplemented, however, by a detailed study of each law which registered a new step.

Until late in the 18th century in England and Wales, almost the whole of public administration, whether road-building, gaol-keeping, poor relief or education, was entirely in the hands of County Justices in Quarter Sessions, and in the Municipal Corporations. Webb says:

⁴(New York: Longmans, Green & Company, 1922.)

"Right down to 1832 there was practically no systematic connection between the Local Authorities and the Central Government."⁵

The eventual taking over of the ownership and administration of local prisons by the Home Office in 1877 was preceded by a slow trial and error period of legislation which gradually encroached upon the field of local autonomy. Progress was extremely slow owing to the strength of tradition in favor of local government. Laws which were seemingly mandatory in character were actually only permissive since the necessary machinery to secure enforcement was absent.

LEGISLATION WITHOUT ENFORCEMENT

Howard's four cardinal principles of gaol administration, say the Webbs, may be taken as the point of departure from which successive Parliaments sought to determine the course of legislation. They were:⁶

1. The provision of prison structures that were roomy, secure and sanitary.

2. All prison fees should be abolished, changing gaolers into salaried servants of public authority.

3. A reformatory regime of diet, work and religious exercises.

4. Systematic inspection of all prisons by outside public authority.

The first legislative results of John Howard's investigations and endeavors were two bills passed in 1774. The first⁷ was aimed at the prevention of gaol diseases, and provided that all prisons should be cleaned periodically and all prisoners washed. It provided further for the appointment of a doctor who was required to report to Quarter Sessions upon the health of prisoners. Separate rooms for the sick were to be maintained.

The second⁸ was a blow at the fee system abolishing the discharge fees hitherto claimed by the gaoler on the release of a prisoner who had been legally discharged by the court. To compensate the gaoler for this considerable loss, the county treasurer was required to pay him a certain sum for each man discharged.

As early as 1784,⁹ we find an attempt being made to secure a rudimentary classification of prisoners. "As far as conveniently may be,"¹⁰ Justices should adopt plans that would break up the prison population into five groups: (a) those convicted of felony; (b) those

⁵Sidney Webb, *Grants in Aid*, 1920, p. 3.

⁶Sidney and Beatrice Webb, *English Prisons Under Local Government*, p. 37.

⁷14 Geo. III, C. 59.

⁸14 Geo. III, C. 20.

⁹24 Geo. III, C. 54.

¹⁰24 Geo. III, C. 54, sec. 4.

awaiting trial on charge of felony; (c) misdemeanants; (d) debtors, and (e) witnesses. These individual groups were to be confined by day and night in dry airy cells. The males of each class were to be separated from the females.

A General Prisons Act was passed in 1791¹¹ that applied to all places of confinement in England and Wales. It made many changes, the most significant among them being the delegation to the Justices in Sessions of the power to appoint a Governor of each common gaol and House of Correction, to settle upon a table of fees for gaolers, and to grant salaries where the fees were materially diminished. This step which aimed to take the jail from the control of the sheriff, is directly traceable to Howard's insistence that the gaoler ought to be appointed by and responsible to some definite higher authority.

For the rest, the said Justices were given authority to draw up rules for prisons, including diet, classification, clothing, work and the punishment of refractory prisoners. These rules were to be submitted to the Justices of Assizes for approval and confirmation. Visiting Justices were to be appointed by Justices of the Peace to visit and inspect each gaol, and to report, at each Quarter Sessions, their findings as to the state and condition of the gaols visited. However, as was presently discovered, with no means of compelling compliance, it was idle to ask the Justices to specify a regime of diet, separation into specific classes, employment, or to provide inspectors.

By an Act of 1815,¹² all gaol fees were abolished, and in their place, Quarter Sessions were to pay salaries to gaolers out of the County Rate. Any gaoler found guilty of extracting fees thereafter was incapable of holding office and could be fined as guilty of a misdemeanor.

In the same year, 1815, an act¹³ was passed "to procure the Returns of Persons committed, tried and convicted for Criminal Offenses and Misdemeanors." The clerks of the various courts were to compile reports once a year, according to a definite schedule blank, and these returns were to be laid before Parliament by the Home Secretary to whom they were submitted.

By 1823 it was apparent that, whatever legislation had been passed hitherto, very few if any of the provisions had been carried out in any appreciable number of gaols throughout the country. In that year, Parliament carefully and laboriously passed an "Act Consolidating and Amending all the Laws Relating to Gaols and Houses of Correc-

¹¹31 Geo. III, C. 46.

¹²55 Geo. III, C. 50.

¹³55 Geo. III, C. 49.

tion.”¹⁴ This was a noteworthy piece of legislation, and was the first measure of general prison reform to be framed and sponsored by the Ministry itself.

It outlined a uniform regime applicable to some 130 local institutions, and laid down an elaborate system of gaol administration. It was definite as to classification and segregation of prisoners, specified diet, clothing, labor, religious services, instruction in reading and writing, sufficient exercise, etc. Female prisoners must be supervised exclusively by matrons. Keepers were required to reside within the gaol. It was compulsory for gaolers to attend Quarter Sessions to report on the actual conditions within their gaols, and to present a certificate (on pain of a £10 fine for failure to do so) as to how far the requirements of this Act had been observed. For want of repairs or in case of contagious disease, Quarter Sessions might remove prisoners from gaols. Systematic records of finances were required to be kept.

THE GRANT IN AID

There was still no means of enforcing compliance with the standards of prison administration set forth at such length in this Act of 1823. All the effort and thought therefore behind this great piece of reform legislation met the same deplorable fate as the acts it was seeking to revise and make more effective. It gradually became evident that some machinery for securing enforcement of these laws which sought to elevate the standard of local administration would have to be invented. About 1832, there was evolved the idea of the “Grant in Aid,” a device which was destined to play a large part in the future relationship of the Central Government to the local authorities.

“By ‘Grant in Aid,’ the English Administrator means a subvention payable from the Exchequer to the Local Governing Authority to assist that Local Authority in some of its statutory duties. It may be unconditionally a fixed amount, or a variable according to circumstances; it may be an isolated payment, but is usually recurrent or annual.”¹⁵

In other words the National Government, from 1832 on, gradually “bought” the rights of inspection, supervision, criticism and control of one local service after another, from whatever governing body had that jurisdiction, by granting a certain “aid” out of the National Exchequer for the relief of the local rate-payer. It was usually a per

¹⁴⁴ Geo. IV, C. 64.

¹⁵ Sidney Webb, *Grants in Aid*, 1920, p. 7.

cent of the annual cost of a service, and its efficacy depended on the power of the central government to withhold the Grant in Aid from those local authorities who did not comply with statutory requirements and standards.

By 1835, half the expense (amounting to some £64,000 a year) of maintaining convicted prisoners under sentence for felony or misdemeanor was being paid out of the Consolidated Fund of the Exchequer.¹⁶ In the same year, a bill "for effecting greater Uniformity of Practice in the Government of the Several Prisons of England and Wales,"¹⁷ a *quid pro quo*, succeeded in passage. In it, the Secretary of State was given the power to appoint State Inspectors to visit every gaol or prison in any part of Great Britain. Any such inspector could call for and inspect all books and records and examine any person holding office in any gaol. Any person wilfully obstructing an Inspector in the execution of his duties could be fined £20. The Secretary of State could visit and inspect any prison, and could order prisoners to be removed from one prison to another.

Webb says of "Grants in Aid": "What we had to find was some way of securing national inspection and audit, and the amount of national supervision and control that was required in the interest of the community as a whole, without losing the very real advantage of local initiative, and local freedom to experiment. By the unselfconscious invention of the 'Grant in Aid,' we have, in the United Kingdom, devised a new kind of relation between local and central authority and created a new species of administrative hierarchy, which with our particular kind of local government produces results, in a remarkable combination of liberty and efficiency."¹⁸ Thus did the central government win the right to see for itself to what extent the laws which Parliament passed in London were carried out in the counties. *The right to inspect the jails was bought by a "Grant in Aid" which later, as we shall find, was used as a club to secure compliance with the law.* Meantime, the central government sought to bring other features of prison management within its control.

In 1839¹⁹ it was enacted that all plans for new prisons must be submitted to and approved by the Home Secretary; and in the same bill, a blank form was drawn up for making the Annual Gaol Returns to the Secretary of State, a form that included all the important data concerning the prison and its inmates.

¹⁶J. Watson Grice, *Local and Central Finance in England*, p. 23.

¹⁷5 and 6 Wm. IV, C. 38.

¹⁸Sidney Webb, *Grants in Aid*, p. 6.

¹⁹2 and 3 Vic., C. 56.

UNIFORM REQUIREMENTS AND LOCAL HANDICAPS

The next outstanding date in this history of English prison reform is 1865. The Prisons Bill enacted in that year is perhaps the most important and influential piece of legislation passed in the struggle to reform local gaols. Certainly its direct influence was far-reaching, and it is sometimes held that it was the 1865 Act and not the Bill of 1877 that really changed English prison administration. The 1865 Statute set up the specific prison regime which persisted until the end of the nineteenth century, and it furthermore paved the way for the passage of the 1877 Act, which finally turned over the ownership and administration of all prisons and gaols in Great Britain to the central government.

The Act of 1865²⁰ demanded that every county and the several subdivisions of every county having a separate prison jurisdiction should provide a gaol to conform with the requirements of this Act, which were, briefly:

1. Separate cells, in number equal to the average of the greatest number of prisoners confined at any time during each of the past five years.
2. Where men and women were confined in the same gaol, they must be kept in separate buildings or separate parts of the same building.
3. Debtors must be isolated from all other prisoners.
4. Two classes of labor were defined: I. Hard Labor, II. Second Class Labor. Prisoners must be kept at the class of labor to which they had been committed. The work was specified even to the number of hours per day.

One of the most significant clauses in the Act was the provision that in case of the default of any prison in complying with the requirements of this Act, especially in respect to separate cells for prisoners, and the rigid enforcement of Hard Labor, the Secretary of State could ask the Treasury to withhold from such defaulting prison the money provided by Parliament toward the expense of maintaining any prisoners in that prison, that is, the Secretary could withhold the "Grant in Aid." Any prison refusing for four successive years to comply with the Act, could be closed by the Secretary of State, and the prisoners transferred at the expense of the defaulting authority to a substitute gaol.

It soon became obvious that the desired results expected of the Act were not forthcoming. Even the threat of withholding the "Grant

²⁰28 and 29 Vic., C. 126.

in Aid" for the maintenance of prisoners was not sufficient to secure enforcement of the law. The Bill of 1865 broke down lamentably. In the first place, in order to comply with the requirements that every prisoner be placed in cellular isolation, and that hard labor and second class labor be provided, it would have been necessary to rebuild almost every local gaol in the country, a reform that would have entailed enormous expense. The County Justices were not willing to undertake any extensive rebuilding of gaols at the rate-payer's expense. As long as the Justices and the Municipal Corporations were the legal owners of their local prisons, they felt themselves the final authority, whatever rules Parliament might enact, to use their own discretion as to how far those rules should be applied.

Besides, the election of 1874 had returned a Government pledged definitely to decrease the burden of rates upon the rural districts. Therefore, the Home Office had its hands effectually tied so far as enforcing the Act by compelling the local authorities to bear the expense of rebuilding their gaols on the cellular plan.

Moreover, the great waste of public money caused by the maintenance of some hundred or so separate institutions, some of which had only a few dozen inmates, began to be apparent. To insist that each of these hundred local gaols equip itself with a new cellular building, appoint a salaried gaoler, chaplain, matrons, and a surgeon, and provide two classes of work, in keeping with the requirements of the Act, when many of the gaols in question were almost empty of prisoners, was absurd and an indefensible extravagance.

As the Webbs sum it up: "To compel the building of new county gaols at the rate payer's expense had become in fact, by 1874, politically almost impossible. The new Cabinet was pledged actually to reduce the county rate."²¹

THE FINAL STEP—TRANSFER TO THE CENTRAL GOVERNMENT

The final step, the transfer of the whole function of prison maintenance from local to central government, was the logical and inevitable solution to the situation. Since the Government was committed to the reduction of local rates, why not accomplish it by relieving the county of the entire cost of maintaining prisons? From the standpoint of the Justices, it was an advantageous move since each year the number of prisoners was increasing, and the day might come when the requirements of the Home Office would have to be fulfilled at the

²¹Sidney and Beatrice Webb, *English Prisons Under Local Government*, p. 199.

County's expense. "Faced with the prospects of these liabilities, and tempted by a reduction of the rates within their grasp, Justices of the Peace, it was suggested, would no longer very strenuously resist the transfer of their authority."²²

The Prisons Act of 1877²³ effected the transfer of ownership and administration of all gaols and prisons in Great Britain from local control into the hands of the Secretary of State. This bill terminated the local obligation to maintain prisons, and said that all expenses incurred after the commencement of the Act should be defrayed out of the moneys provided by Parliament.

The Prisons Act of 1877 constituted an administrative revolution in England. In no other branch of public administration has complete centralization been effected. The English people strongly prefer local to central administration, as is evidenced in other public services—police, roads, elementary education, etc. With the "Grant in Aid" as its weapon, the Central Government is able to supervise and control to a reasonable extent all of these branches of local government. Only in the case of prison administration has it found it necessary to take over the entire control.

To explain such a revolutionary step, one must go back over the whole trend of this penal reform movement. Uniformity was the objective toward which the central government, led by the Home Office, had been steadily driving from the beginning of the struggle. All Parliamentary endeavors had been toward establishing a standardized system of gaol administration, applicable to all gaols, and adopted with equal thoroughness in every prison in the realm. This seemed to be the only way of obtaining a prison system conforming alike to the ordinary rules of sanitation and to the gradually evolving principles of penal administration. One standard regime, universally enforced, was patently impossible in some 130 scattered, half-filled, locally managed gaols, and it finally dawned on the Home Office that to accomplish its dream of uniformity, it would be necessary greatly to reduce the number of gaols, change their location in many instances, rebuild many, and abandon others as altogether unsuited to the cellular plan and the idea of providing two classes of labor. At the same time, it was an opportunity for the Ministry to accomplish its promised reduction in the county rate by having the National Exchequer assume the whole burden of gaol administration.

This latter motive met with the hearty approval of both the County Justices and the Municipal Corporations. The loss of local autonomy

²²*Ibid.*, p. 200.

²³40 and 41, Vic., C. 21.

was not to be compared with the gain of being freed from the considerable annual expense of maintaining prisoners.

The problems of adjustment involved in such a transfer of ownership were finally solved to the mutual satisfaction of both sides. The National Government paid no money for the gaol buildings themselves. Apparently the Local Authorities considered the exchange to their advantage. If they could be relieved of all future expense in regard to offenders, they were willing to turn their gaols into government property.

In cases where a local unit of government, at the time of the passing of the Act, had no prison of its own adequate to the accommodation of prisoners belonging to such authority, it was required to pay into the Exchequer £120 for each prisoner for whom accommodations had not been provided. This provision seems fair enough, since those localities which had gone to the expense of providing suitable accommodations for their own prisoners could rightfully object to handing over their buildings, when other authorities who had been negligent in that respect were put to no expense at all, and yet would have their prisoners adequately cared for just the same.

If a prison was discontinued, the law provided that it should be reconveyed to the local authority, upon payment by such authority into the Exchequer of £120 in respect of each person belonging to such prison authority for whom cell accommodations were provided at the time of the passing of the Act. The local authority to whom a prison was reconveyed could sell or otherwise dispose of the prison in any manner it saw fit.

Local Justices of the Peace retained their rights of inspection and could examine the condition of any prison and its inmates within their jurisdiction and could mention, in the visitor's book kept by the gaoler, any observations or criticisms they deemed necessary.

The Secretary of State was empowered to designate particular prisons for particular classes of prisoners, a further step in the classification of offenders that has since proved wise and practical, and one which could never have been achieved under any thing short of centralized control. Obviously, different classes of criminals need entirely different kinds of treatment, and one institution can best handle a fairly homogeneous group.

The general superintendence and management of all prisons was turned over to a body of Prison Commissioners, not more than five in number, appointed by the Home Secretary, and responsible to him in everything.

On April 1st, 1878, the day of the transfer of ownership, the Home Office closed 38 of the local prisons as unsuitable or inadequate, and by 1894, the 130 local gaols which had been in existence at the time of the transfer had been reduced to 56. Recently, several others have been discontinued.

COMMENTS AND INFERENCES ON THE ENGLISH EXPERIENCE

Several things in this history of the extension of state control over local jails in England are worth noting. In the first place, the movement began in 1774 and the final chapter was not written until 1877, one hundred and three years later, when complete control was surrendered to the Home Office. So far as I am aware, the earliest effort in this direction which was made in the United States was in 1790 when the Pennsylvania legislature directed its attention to the Walnut Street jail. This was however an isolated endeavor which was not again attempted by any state until after the Civil War. In other words, if we proceed in the same direction and go as far, we have still about forty years in which to reach the same goal.

The Act of 1791 which took the jails out of the control of the sheriff and placed them in the hands of the county justices is also very interesting. The replies which I received to the questionnaire indicate that in nearly all the states, our jails are still administered by the sheriff, an elected official who comes and goes knowing little and learning little about the care of prisoners during his short term of office.

We must note, too, by what means, the central government in 1835 secured the right to send its own inspectors into the local jails. It virtually bought this right by a "Grant in Aid." We have never had to go to this length to secure state inspection of jails. Mere inspection has not been seriously opposed by any but state subsidized private institutions which have not however been able to maintain their stand.

We should note, too, that the "Grant in Aid" became the device which the central government used in 1865 to force the local authorities to raise their standards of care in conformance with its requirements. Our individual states have not yet attempted to ease the burden of government now resting on local authorities by providing funds in support of local work. Hence, we do not have this particular lever of financial control to lift the jails out of their low condition.

We ought by all means to take to heart the experience of England in insisting on a uniform system of care. This led straight to the

taking over of the jails by the central government. As was pointed out, it was impossible for all the local authorities to comply with the demands of the central government. Our counties and municipalities, we are certain, would not and could not conform to a rigid set of regulations governing prison life. The only way in which the central government of England could obtain uniformity in administration was by taking over the jails and by closing those least suited to the then prevailing idea of prison administration. The Webbs declare that the requirement of uniformity was unnecessary but justify the taking over of the jails on other grounds. Centralized control, as they point out, makes it possible for an institution to specialize in its work; to devote all its energies to the care of a certain class of prisoners. It makes possible, too, as we know, a somewhat broader and more enlightened management. But there should always be the greatest freedom to experiment, and this does not go along with rigid uniformity. A high prison official of England once boasted to an American student of penology that he knew the exact minute when every cell door would be locked in all the jails of England. Prisons will in the course of time take on the character of educational institutions in which research plays a large part. Education and research cannot go along with strict uniformity.

THE STRUGGLE FOR CONTROL OF JAILS IN THE UNITED STATES

We turn now to the United States. Our Federal Government, though it uses local jails, workhouses, etc., as places of imprisonment for certain classes of Federal prisoners, has literally no control or power over these institutions. Under the Act of 1789, it has been given authority to make financial arrangements with local officials for boarding prisoners, and for some time, it has had an inspector who visits these selected prisons to note the condition of those committed from Federal courts. So far as I am aware, it has never published a report on these local institutions, depending rather on *the choice of jails* to secure proper treatment of its wards. That this has not been a sufficient safeguard is shown by the report of Joseph F. Fishman, a former Federal prison inspector whose damning indictment of these local institutions, published after he resigned from the service, ought to make every American blush for shame. These penal institutions are set within the framework of local government which is a matter for the individual states to handle. The states can do what they will with these jails, workhouses and road camps. They can leave them entirely in the hands of local authorities or they can run

the whole gamut from mere inspection to actually taking them over and running them as state institutions.

It is not an easy matter to determine to what extent the individual states have exercised their right of supervision and control. Much research needs to be done before an entirely accurate picture can be given of the situation. In order to get a bird's eye view, I resorted to a questionnaire, which, thanks to co-operating state officials, has yielded some important information.

The answers received were tabulated, and are given below in summary form on the questionnaire itself. Y indicates an affirmative answer, N, a negative answer and U designates that the question was unanswered. Those who are interested in replies from each individual state, may turn to the appendix where the returns are shown in a larger table by states.

TABLE I—(Final Count)

NOTE: *In answering, please write Yes or No in space following each question.*

Does State supervision or control of COUNTY JAILS include:

Y. N. U.

1. Power to approve or reject (a) new building plans [21/26/1]; (b) proposed alterations [20/26/2]; (c) choice of location [8/36/4]; (d) to specify number of individual cells in proportion to inmate population [9/33/8]?

2. Power to draw up and enforce a specific regime, covering (a) diet [11/36/1]; (b) education [6/42/0]; (c) training [5/42/1]; (d) clothing [10/37/1]; (e) exercise [9/39/0]; (f) employment [6/41/1]; (g) medical care [11/36/1]; (h) punishment of inmates [8/39/1]?

3. Power to transfer prisoners from one Institution to another []? To what classes does this power apply: (a) women [8/39/1]; (b) children [10/37/1]; (c) insane [6/40/2]; (d) feeble-minded [6/41/1]; (e) refractory prisoners [6/40/2]?

4. Power (a) to inspect Institutions [32/16/0], and (b) to make public the findings [32/16/0]?

5. Power to compel Institutions to make periodic reports, covering (a) inmates [22/24/2], and (b) finances [19/27/2]?

6. Power to compel Institutions (a) to keep uniform records of prisoners [18/27/3]; (b) to use a uniform system of keeping accounts [13/32/3]?

7. Power to compel improvements in (a) structure of buildings [11/36/1]; (b) management [8/37/3]; (c) prison regime [8/37/3]; through instituting legal proceedings, or by some other method?

Answer: (state legal or other remedy in vogue).

Remedies given in detail elsewhere—in the text.

Remedy given 8—38 no method or remedy—2 unanswered.

8. Power to remove inmates to a more suitable Institution at the expense of the local authority in case of non-compliance or inability to compel compliance with recommendations of State authority?

Answer: Y-8. N-32. U-8.

9. Do any or all of these State powers over county jails apply to (a) municipal jails [24/19/5]; (b) houses of correction or workhouses [23/18/7]; (c) police lockups [20/22/6]?

Answer: (Please specify, in detail, if powers mentioned in preceding paragraphs apply only in part to certain institutions).

10. Do State prison labor laws apply to local as well as to State Institutions?

Answer: Y-5. N-35. U-8.

11. (a) What jail fees exist? (b) To what extent are they regulated by State law?

Answer:

	have fees	no fees	
(a)	Y-18.	N-4.	U-26.
(b)	Y-9.	N-7.	U-32.

12. Are County Institutions under the control of (a) the sheriff [];
 (b) a Board of Prison Inspectors appointed (1) by the Court []; (2)
 by the County Commissioners []; (3) by the State itself [];
 (4) by some other authority []?

STATE SUPERVISION OR CONTROL ITEMIZED

The first question deals in general with state jurisdiction over the physical plant. In 21 states, the local authorities submit plans for new jails, and in 20 states plans for proposed alterations, to their respective state boards or departments. Only 8 of the state boards have the right to choose the location of a new jail site, and 9 may specify the number of individual cells that must be provided.

Question No. 2 is especially significant since any state having sufficient authority over local institutions to enforce a specific regime can be said to exercise real control. Unfortunately, but a mere handful of states indicated any such jurisdiction. Eleven states reported the power to insist on a specific diet for prisoners, 6 states claimed control over their education, 5 may require special training, 10 state boards can specify what clothing shall be provided, 9 states have the right to insist on the amount of exercise jail inmates are given, 6 states can make rules for the employment of jail prisoners, 11 states require definite medical care, and 8 states have jurisdiction in the matter of the punishment of refractory inmates.

The power to transfer prisoners from one institution to another is very important now that prison science has developed to the point where specialization in function of institutions has taken place, coupled with the idea of individualization of treatment. In the matter of transfer, 8 states reported the power to remove women from one institution to another; 10 states have the right in reference to children; in 7 states, the feeble-minded may be taken out of local jails; and in 6 states, refractory prisoners may be transferred to more suitable institutions.

Question No. 4 on state inspection of local jails is the only one out of the dozen questions asked on which more states returned an affirmative than a negative answer. Of the 48 states, 32 or 66 per cent do

have the right to inspect local institutions periodically, and to make public report of their findings. Nevertheless the right to inspect does not mean in all cases that the state board possessing this power theoretically does make anything like regular and careful inspection of every county institution. Where the local authorities are hostile or the board is already overburdened with the task of administering state institutions for which it is directly responsible, inspections of local jails, if made at all, are superficial and infrequent. Furthermore, even though 32 states (just 2/3 of the whole) do possess this power of inspection, it is of small significance, after all, if the good work stops there. Indeed, it seems especially reprehensible to make examination of jails, to discover the presence in them of all kinds of filth and vermin, disease and idleness, insufficient food and bedding, and the lack of proper sanitation, and still do nothing to remedy conditions. This procedure is less defensible than to ignore jail evils altogether, for ignorance, although no excuse, is at least an explanation for permitting abominations.

State inspection, with attendant publicity, is at best as we noted in England, a clumsy and ineffectual device to secure compliance with law. However it must be remembered that England had at least incorporated into law a complete system of jail administration before she undertook Governmental inspection of local institutions. *The primary motive in making such inspection is to ascertain to what degree the laws pertaining to jail administration and the care of prisoners are being carried out, and how closely the local authorities observe the standards laid down. In most of the states in this country no laws outlining a regime have been evolved, no definite standards of jail administrations have been decided upon.* As far as actual law is concerned, the local authorities may suit themselves as to the management and condition of their jails. In such event, the state inspector has absolutely nothing to go on but the rather vague and shadowy idea of exposing any flagrant abuses or particularly horrible conditions. He cannot report that such and such sheriff or county board is refusing to obey specific laws or is neglecting to come up to requirements because there are no laws to break or requirements to come up to.

State inspection of county jails ought, of course, to be extended to forty-eight states instead of to thirty-two, and with it ought to go hand in hand the power to force the local authorities, where inadequate and unsatisfactory jails have been disclosed, to bring those institutions up to a definite standard. This of course presupposes the framing of

suitable laws and the drawing up of a satisfactory jail regime to be used as a standard. We find by reference to the replies to question No. 7 that aside from the weight of publicity in the task of correcting jail evils, few states have any real weapon to secure compliance with state requirements. Only 11 states have the legal machinery to compel improvements in structure of buildings, 8 have the power to demand necessary changes in jail management, and 8 are able to compel improvements in prison regime. Until this power is given to all state boards or departments we can expect very little immediate reformation of county jails, in spite of the crying need for a drastic change. The exposure of jail conditions through published reports may arouse at time a righteous indignation, but unfortunately such public sentiment acts spasmodically and does not bring about the improvements for which the need is so imperative in the jails of the United States.

Questions Nos. 5 and 6 deal with the power to require local institutions to keep uniform records of prisoners and finances, and to make periodic reports to the state on these two points. County institutions can be compelled to make periodic reports on inmates in 22 states, and on finances in 19 states. Eighteen states have the authority to compel the keeping of uniform records of prisoners and 13 to compel uniform financial records to be kept. We note that more states require data to be kept and reports made on prisoners than on finances. The lack of statistics and of financial reports in over half the states is the second outstanding reason why county jails have shown so little improvement in the past. The exercise of state control or even of state supervision must depend in large part on jail records and periodic reports. These ought, of course, to be uniform. With no systematic records and no reports it is impossible to obtain accurate information on prisoners or on jail administration. For instance, in the important matter of the prisoners' diet and general maintenance, financial reports would show the amount and the quality of food purchased, the actual cost of board per prisoner, the kind of clothing with which inmates are provided, and so on. In this country we have been very backward in the field of compiling criminal statistics and institutional records. It is to be hoped that this lack will gradually be supplied, somewhat after the competent way statistics are handled by the Home Office in England, and by the Dominion Statistician in Canada.

Only 8 states reported that they could remove inmates to more suitable institutions in case of non-compliance with the requirements

of the state authority. As a means of compulsion this should prove effective, since any such removal would be at the expense of the defaulting authority and in the nature of a public reprimand. But again we cannot say how often even in these 8 states transfer of prisoners is resorted to by the state authorities. Quite evidently there are state powers which it does not seem politic to use in dealing with local units of government.

Question No. 9 was framed in view of the fact that a certain distinction has always been made between county institutions and those managed and owned by municipal corporations or townships. It took England a long time to break down this distinction in her attempt to control local prison authorities. The geographic division of the County existed long before cities and large towns grew up in any numbers, and for some reason the central government felt reluctant to step in and dictate to the municipal corporations as to how they should manage their jails even after it had passed extensive legislation on the administration of county institutions. The Webbs say of the situation from 1800 to 1830: "The two or three hundred gaols and Houses of Correction which were not under County Justices were even less affected by Howard's influence than the hundred or so of county prisons. The Municipal Corporations, the lords of manors and the owners of special franchises seem for the most part to have paid no attention whatever either to Howard's strictures or to the injunctions of Parliament. They neither put their vile dungeons and lockups into a sanitary state nor promulgated the regulations prescribed by statute. In 1812, nine-tenths of those outside the county jurisdictions seem to have remained pretty much as they were in Howard's time. The most important of all the prison authorities, the corporation of the City of London, was beyond all comparison, the worst."²⁴

In this country, the same distinction still exists. In Pennsylvania, for example, the State Welfare Department can and does pass on the plans for the building of new county jails, and may select the jail site itself. However, when the new Philadelphia House of Correction was proposed and the plans drawn up, the State Department was not consulted, and Philadelphia would have resented as sheer interference any attempt on the part of the State to pass on, or to make recommendations for, the new House of Correction. State power, although extended in this respect over counties, does not always include municipalities in its jurisdiction. The answers on this point show that while 32 states reported inspection of county jails, only 24 of these have

²⁴Sidney and Beatrice Webb, *English Prisons Under Local Government*, 1922. (Longmans, Green & Company), pp. 63-64.

the same powers over municipal jails, 23 over houses of correction and workhouses, and only 20 pretend to supervise police lock-ups. The discrepancy between 32 and 24 is not great, but it is interesting that this irrational distinction should persist even to the present day in this country.

Very little attempt has been made to enact prison labor laws which apply to local as well as to state institutions. Only 5 states reported, in answer to question No. 10, that state labor laws applied to local jails. Considering the wholesale unemployment in these institutions, one wonders what use is made of state regulations for jail labor even in those 5 states. Idleness is one of the chief evils demanding immediate remedy in the problem of the jail.

Question No. 11 was asked with the expectation that the answers would reveal the existence of turnkey fees, discharge fees, and so on. It was interpreted, however, as a request for information on the method of paying for the board of prisoners. This is a very natural mistake and one that is frequently made, since the per diem allowance given the sheriff for the maintenance of each prisoner is often called a fee. The disadvantages of such a system need no prolonged discussion. Anyone who has studied the jail situation at all knows that the per diem method of providing board has been sadly abused by sheriffs and jailers. The opportunities for graft are obvious. With no dietary standard to conform to, and in many states no one in authority to look into the question of meals served, the sheriff can (and it is being done today) feed the prisoners for half, or less, of the daily sum provided, and simply pocket the rest. Inadequate meals, poorly balanced, insufficient, and badly prepared are to be found in a great many jails.

This scheme for paying the board of prisoners with all its attendant abuses still persists in most of the county jails in this country. Unfortunately, 26 states failed to answer this question, but in 18 states of the 22 which did report on this question the local authorities still pay the administrative officer of the jail a set sum per day for feeding his prisoners, that is, 81 per cent of all the states replying to the question on fees do pay board on the per diem basis. It is fair to assume that about the same per cent would hold good for the states that failed to indicate their stand on this point.

Section (b) of question No. 11, on the degree of state regulation of jail fees was so poorly answered that the returns cannot be interpreted with any degree of accuracy.

TABLE II

States Having Whatever No Supervision or Control over County Jails	States Having Powers of Supervision and In- spection over County Jails but Having No Means of Enforcing Standards or Com- pelling Improvements	States Having Both Supervision and Control of County Jails, with Special Machinery for Compelling Local Authorities to Comply with State Departments
State	Board or Department	State
Arizona	Board of Directors of State Institutions	Alabama
Arkansas	No Board	Colorado
Iowa	Board of Control	Michigan
Kansas	Board of Administration	Minnesota
Kentucky	Board of Charities and Cor- rection	New Jersey
Mississippi	No Board	New York
Nevada	No Board	Rhode Island
New Mexico	Public Welfare Department	South Dakota
North Dakota	Board of Administration	
Oregon	Board of Control	State Prison Inspector
Texas	Board of Control	Board of Corrections
Utah	No Board	Welfare Commission
Vermont	Department of Public Welfare	Board of Control
Washington	Department of Business Con- trol	Board of Control of Institu- tions and Agencies
West Virginia	Board of Control	Department of Correction
Wyoming	Board of Charities and Reform	Public Welfare Commission
		Board of Charities and Cor- rections
	California	
	Connecticut	
	Delaware	
	Florida	
	Georgia	
	Idaho	
	Illinois	
	Indiana	
	Louisiana	
	Maine	
	Maryland	
	Massachusetts	
	Missouri	
	Montana	
	Nebraska	
	New Hampshire	
	North Carolina	
	Ohio	
	Oklahoma	
	Pennsylvania	
	South Carolina	
	Tennessee	
	Virginia	
	Wisconsin	

The replies to question No. 12 were also so unsatisfactory that we have not attempted to summarize. In general, we can say that in most states the jails are still under the sheriff, though some few are breaking away as in Pennsylvania, which has instituted Boards of Prison Inspectors to replace the sheriff in counties of certain classes.

THE SITUATION WITH RESPECT TO SUPERVISION OR CONTROL SUMMARIZED

To sum up the situation I have attempted to classify the forty-eight states according to the degree of control they exercise over local jails. This division into three main classes is based primarily on the answers to questions No. 2, No. 4, and No. 7 of the questionnaire. For instance, any state reporting the power to draw up and enforce a specific jail regime, the right to inspect any jail and to make public the findings, and finally, the power to compel local authorities to make those improvements it thinks desirable, would seem to have achieved real authority over county and municipal institutions. Conversely, any state answering negatively to these three questions must be classed as virtually without any jurisdiction at all over local jails.

As we see from the Table, 16 states or 33% have no control whatever over county penal institutions. Four of these 16 have no Welfare Department or Board of Corrections, or even a Board of Control for state institutions.²⁵ With no state board of any kind to which jurisdiction over jails could be given, their first step would be the organization of a Board or a Department of Welfare. There are 12 states which cannot plead the lack of a suitable Board as an excuse for wholesale neglect of the jail problem. It is true that the greater number of these boards are Departments of Business Administration or Boards of Control, and these have seldom been responsible for any but state institutions. However, it is surprising to find that Kentucky, New Mexico, Vermont, and Wyoming have either a Welfare Department or a Board of Charities and Corrections which ought from their very titles to be easily able to extend their jurisdiction to include at least supervision of county institutions.

The 24 states in Column 2 reported certain restricted supervision over county institutions, usually limited to the power to inspect jails

²⁵Arkansas formerly had a Board of Charities and Corrections, but in April of 1923, the appropriation of this Commission was vetoed by Governor Thomas C. McRae.

New Mexico's Public Welfare Department consists of a State Health Officer.

Utah has a "Board of Corrections" so called, which was created to govern and control the State Prison. Its jurisdiction extends to no other institution.

and make public report of their findings; the right to recommend to the County Commissioners changes and improvements that are especially necessary: in general, to act in an advisory capacity only. The Boards in these 25 states have no powers of enforcement to see that their suggestions and recommendations are adopted by the local authorities. So we must conclude that, save the weight of public opinion, the county officials are supreme even in those states whose Boards have supervision over jails, and state inspection means very little as far as securing practical results in the way of desired improvements. A negligent local authority can continue its criminal laxity in respect to its jail and jail prisoners, and the state board is helpless. It will take more than suggestion and recommendation to bring about the so desperately needed reforms in many of the county jails.

Something approaching effective state control has been secured in 8 states. Rhode Island is the sole and shining example of entire state control. All charitable and correctional institutions within this state are under the State Welfare Commission. This is not a division of powers, since there is no county or municipal jurisdiction over these. The other 7 states in column 3 are states that have been progressive enough to have secured a real control of local institutions, or at least enough power to insist on a minimum standard of care for prisoners and so on. In each of these states the English example has been followed, that is, some sort of machinery has been evolved to compel the local authorities to comply with state regulations and recommendations. Colorado has even adopted the principle of the "Grant in Aid," to the extent of using a system of biennial appropriations from the State Legislature to the various counties. The Michigan Welfare Commission can condemn a jail for failure to come up to requirements, and then the law compels the sheriff in charge of the condemned jail to transfer his prisoners to a safer place. The Michigan Commission may also make recommendations to the Governor who in turn has power to remove from office. New Jersey enforces its standards through instituting legal proceedings against the negligent authority. The New York Commission of Correction is enabled by law to close any jail it deems "unsafe, unsanitary or inadequate," in which case, another jail can be designated by the courts for the transfer of prisoners.

In Alabama, the office of State Prison Inspector was created by an Act of the Legislature in 1907. The authority of the Prison Inspector was greatly amplified and increased by an Act passed in 1911. At present, the Inspector has the power to formulate rules for county jails on hygiene, feeding, health, and management, and such rules

have the same force and effect as law. "Whenever such inspector shall make a written report to the County Commissioners or the Board of Revenue that certain conditions in the jail should be remedied, they shall have the matter attended to within a reasonable time, as may be designated by the Inspector, and shall make a written report to the Inspector that such orders have been carried out."²⁶ If the alterations and improvements are not carried out, the Inspector may order any or all persons to be transferred immediately to the jail of some other county, designated by the Inspector. "If any sheriff or governing board or body wilfully fail or refuse without good excuse to obey such order, such person or persons shall be guilty of a misdemeanor, and upon conviction shall be fined not less than \$25 and not more than \$500."²⁷

South Dakota has given its Board of Charities and Corrections power to insist on a certain standard of care and administration. The Board may draw up rules relating to the cleanliness of prisoners, their classification, clothing and bedding, medical care, and the instruction of prisoners. Every sheriff or other officer in charge of a jail is required by law to conform in all respects to the rules and regulations prescribed by the Board. Any officer having charge of any jail who refuses or neglects to conform to any rule or regulation established by the Board of Charities and Corrections is deemed guilty of a misdemeanor and is punished by a fine. By law it is the duty of the County Commissioners or other governing body to provide, at the expense of the county, city or town, proper equipment, fixtures and repairs as may be prescribed by the Board of Charities and Corrections.

A few interesting variations occur in several states. Some of them are worth a brief comment.

Although the Kansas Board of Administration has no power over county institutions, the State Board of Health can inspect jails and make recommendations to the county commissioners respecting matters involving sanitation. Kansas is unique in the fact that women cannot be given jail sentences in that state. Women misdemeanants are sent instead to the Women's Industrial Farm. Boards of County Commissioners can work jail prisoners on road construction.

Texas adds to its reports that there is no "state control of local institutions other than such supervision as the State Health Department and kindred agencies have over all institutions both public and private."

²⁶Section 4859—Code of Alabama, 1923.

²⁷Section 4863—Code of Alabama, 1923.

In New Mexico the State Health Officer may examine the sanitary conditions of any institution within the state, may compel the installation of sanitary equipment, and insist on any improvements that are for sanitary reasons only.

Montana claims compulsory powers over local institutions through the State Legislature to which the Board of Charities and Reform makes annual reports. The legislature then takes any action it sees fit. This however seems a vague and doubtful compulsion and could probably be claimed, legally, by any state, since the state legislatures presumably could take action against county jails if they saw fit—but the fact remains that they do not!

The low and evil nature of most of these local jails, workhouses, etc., in the United States is well known. The few shining examples of the successful operation of a penal institution by local authorities, such as the West Chester County penitentiary of New York and the Occoquan Workhouse of the District of Columbia, are certainly the exceptions which prove the rule of bad management and unthinkably low standards of care.

All who have studied this problem have insisted that each state should take over the care of misdemeanor prisoners, replacing the jails with a very much smaller number of state owned and operated institutions, each devoted to making the most it could out of the individuals handed over to it and specializing to a reasonable extent on a certain class or classes of delinquents. This would leave the jails still under the care of local authorities as houses of detention for untried prisoners.

THE NEXT STEPS

In my report to the National Crime Commission, entitled "Propagating Crime Through the Jail and Other Institutions for Short-Term Offenders," I have jotted down some suggestions for bringing about the change.²⁸ I can do no better than quote what I said in that report:

"It is well to recognize certain difficulties in the way of a realization of this program. To build state institutions *de novo* sufficient to care for all misdemeanants costs more money than many of the states are now willing to put up, and for the state to take over the county jails would probably produce a roar of protest due to the disturbance of local political machinery which this move would no doubt cause. It is very doubtful, too, if there is now a single state which contains enough decent jails to form the foundation for a state system. In other

²⁸Pp. 29-31.

words, the time is not now ripe to do as England did. We must, perhaps, wait until some of the more intelligent communities have constructed institutions worth taking over by the state.

"One could go about the substitution of state institutions for local institutions in one of several ways. Indiana has established a state farm for all misdemeanants receiving a sentence of over thirty days. Massachusetts, on the other hand, seems to have started on the policy of developing at Bridgewater a state institution for selected classes of misdemeanants. Neither state, we note, has entirely eliminated the use of local institutions for sentenced prisoners, but a beginning has been made that is decidedly worth while.

"Our first suggestion, then, is that if a state cannot afford to embark on the policy of creating a sufficient number of institutions to care for all misdemeanor prisoners, it should establish one for a selected group, making the selection not according to the crime, nor the length of sentence, but preferably on the basis of personality. A state institution could be established for the feeble-minded, or for the psychopathic group, or for the vagrants and tramps.

"Our second suggestion is that the individual states be given more power over existing local institutions. Specifically, we would urge that each state enact legislation that would give to some state department, board or commission with respect to jails, houses of correction, workhouses, road camps, etc., the powers enumerated below.

- a. To inspect and make public its findings.
- b. To require uniform accounting and the making of prescribed reports.
- c. To compel local authorities, whether county or municipal, to submit for approval all plans for new institutions, including location, or for the alteration of old ones.
- d. To prescribe a regime, not necessarily uniform for all institutions, covering food, clothing, exercise, work and cellular accommodations.
- e. To transfer prisoners from one institution to another at the expense of the local unit where the prisoner or prisoners were first incarcerated.
- f. To close an institution on account of inability to maintain a reasonable regime.
- g. To develop specialized local institutions through exercising the power of transfer."

We have yet to find a single state which now has all the powers enumerated in the preceding paragraphs. Some have none. Of the

forty-eight states, thirty-two now have the right to inspect local institutions and to make public their findings. However, the power to make inspections and to publish reports is rendered almost futile by the complete lack, in all but a handful of the states, of authority to lay down a definite jail regime and to require certain standards of care in the treatment of prisoners. Our State Boards of Charities and Correction, Departments of Welfare and other boards or commissions which look after these local institutions have been entirely too modest in requesting legislatures for power. These state agencies must furnish expert leadership and guidance, and to do so, must be given a fair measure of that control which our investigations show they do not now possess.

"Our policy with respect to these local institutions is, we freely admit, opportunistic. If state finances permit the building of specialized state institutions for the care of all misdemeanants, well and good. This will drain the convicted side of the jail, but the extension of state control over the local institutions would still be necessary for the protection of the untried. If a county or municipality decides to build a modern penal institution for its own use, first obtaining the approval of the state as to plans and location, then this should be encouraged. We may rest assured that all counties and municipalities will not do this. The new institutions that are built can be taken over later by the state and made units of a state system. They will themselves be the incentive for this, as in all probability neighboring counties will wish to send their prisoners there instead of building a new institution of their own.

"State institutions for all misdemeanants are, however, the goal, and the quicker we attain it, the less will our reputation for efficiency and common sense suffer."