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SOME CONSIDERATIONS ON THE CHARACTER AND ORGANIZATION OF PRISON LABOUR

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I. INTRODUCTION

The organization of an institution is determined by its character and purpose. Accordingly, in the case of prison labour its organization has varied as the concepts of the nature and purpose of such labour have changed.

At present, prison labour is still considered by many as an isolated activity organized by a Prison Administration and as such closely connected with the maintenance of order and discipline in the prisons. More recently, under the impact of modern penology, prison labour has come to be regarded either as a right of the prisoner or as a part of the treatment that the latter is supposed to receive in prison. Without disregarding discipline and order, both points of view aim in a different way at the rehabilitation of the prisoner. The question arises whether or not the accepted systems of organizing prison labour can fulfil these purposes. Before examining this question we must consider how prison labour has evolved.

II. THE ISOLATED EVOLUTION OF PRISON LABOUR

In spite of some evident progress, prison labour is still seriously handicapped by its isolated evolution and therefore is not considered as part of free labour, i.e. as a social and economic phenomenon. This has not prevented some prison administrators from considering prison labour as something that could be used to help to balance the prison budget and even to make it self-supporting. Prisons have in this way been transformed into economic entities. This, although welcome from a budgetary point of view necessarily implies the subordination of a social aim,

* The opinions expressed in this article are not necessarily those of the Secretariat of the United Nations.

that of the rehabilitation of prisoners, to a budgetary aim.

The isolated evolution of prison labour is the historical result of two general attitudes that, although different in origin and setting, are closely related. The first one was the widespread belief, still prevailing in some quarters, that prisoners constituted a group apart deserving only punishment and the deprivation of human rights and social responsibilities. As a result of that attitude prison labour was considered a kind of work lacking the dignity of labour in general and was part of the punishment inflicted.

The second attitude resulted, at a later stage, from the refusal of organized labour to consider prison labour as forming part of labour in general. This negative attitude took a hostile turn as soon as the progressive penological movement advocated a more human attitude to prison labour. By then organized free labour was already a force to be reckoned with. It had painfully conquered its rights as a social group and therefore regarded those rights as being exclusively its own. Moreover, it was already part of a rather well defined social structure in which prisoners were of practically no consequence and had no rights. If convicted a worker was not considered as such as soon as he was sent to prison.¹ Thus, ironically enough, one of the first stumbling-blocks met by prison labour was organized free labour. Actually, the "problem of competition" between

¹ This was in accordance with the then existing principle of "less-eligibility" stressed by Bentham and later by other writers and applied more or less consistently by many prison administrations. Briefly stated, it meant that the condition of the prisoner should never be better than that of the poorest or lowest honest citizen. Curiously enough an isolated echo of this principle was heard at the First United Nations Congress on the Prevention of Crime and Treatment of Offenders, held in Geneva in 1955.

both forms of labour so often referred to but never fully discussed is perhaps the last trench in which organized labour, more or less reinforced by employers' interests in some countries, still defends itself against prison labour.

The period of time during which the first attitude prevailed, i.e. that prisoners are a group practically deprived of rights and social responsibilities, lasted far longer than the second period and its roots are mostly of an emotional character. It reflected a penological conception represented by the walled prison in which the prisoner was confined to a world of his own in which custody, security and control were practically the only guiding principles. Accordingly, prison labour when it existed was part of the punishment. Later, under the twofold impact of humanitarian and utilitarian trends, prison labour was slowly divested of its old penal garb and came to be considered as something which could be utilized either in keeping order and discipline, in the construction of public works or in private enterprises.

Although when compared with the past, the new policy marked a step forward, prison labour remained the lowest kind of unskilled and cheap labour and was considered as something unconnected with labour in general. The fact that for utilitarian reasons some economic value was attributed to prison labour in no way improved its social status and for that matter that of prisoners as workers.² What they received, if anything, was given either as charity or for humanitarian reasons and very seldom as an economic recognition of the work performed.³

Briefly, regardless of their skill or training and even less of their future rehabilitation, prisoners

represented no more than a cheap source of labour. If, occasionally, the question of their social rehabilitation was raised, it was stated with more or less conviction that work, the harder the better, was the best way to achieve their rehabilitation. This attitude reflected that of public opinion for which prisoners were something not worth worrying about.⁴

Later, when in the first part of the XXth century a more humanitarian penology began to take shape one of the first questions raised was that of the rehabilitation of the prisoner and the role that prison labour should play in this rehabilitation. While after some efforts the aim of social rehabilitation was recognized, that of considering prison labour as a particular aspect of labour in general, encountered and still encounters serious objections of various kinds. In fact, no progress can be made in this respect by maintaining that the prisoner has a right to work or that prison labour is part of the treatment, if at the same time prison labour is considered as a prison administration problem.⁵

The conclusion would seem to be that although prison labour conditions have improved in some countries this improvement has in no case removed the barrier between free and prison labour. With very few exceptions, prison labour continues to be regarded as something exclusively within the field of criminology and penology. The fact is that prison labour is more than a penitentiary problem and as such must be viewed against a broader background. Though seemingly paradoxical, it would appear that as the criminological aspects of the penitentiary problem have been intensified, greater stress has been laid on

² In this respect it should be remembered that even in the XXth century prisons not all prisoners work, if by work is understood constructive work.

³ In 1895, the Fifth International Penal and Penitentiary Congress held in Paris, declared emphatically that the prisoner has no right to wages. It added, however, that there was an interest for the State in giving the prisoner some remuneration. See *DELIBERATIONS OF THE INTERNATIONAL PENAL AND PENITENTIARY CONGRESSES* by N. K. TEETERS, 1949. As late as 1913, "the Attorney-General of Texas held that a law authorizing the payment of wages to prisoners was unconstitutional on the ground that when the offender is convicted he loses not only his freedom but also his right to the products of his labour, and that the sentence makes him both a prisoner and a slave. The state constitutions, with two exceptions, provide that slavery is illegal except for conviction of crime. This, however, does not mean that the prisoner must necessarily be a slave." See *PRINCIPLES OF CRIMINOLOGY*, by SUTHERLAND AND GRESSEY, 1955, p. 525.

⁴ For emotional reasons, public opinion has seldom advocated progressive policies in penological matters. More often than not progressive reforms have been the result of a rather persistent struggle between the aims of an enlightened minority and the prejudices of public opinion. Occasionally governmental circles have relied on public opinion to oppose penological progress.

⁵ Historically, the concept of prison labour as no more than a prison administration problem was maintained until 1950 by the International Penal and Penitentiary Congresses. As late as 1925, the Congress held in London stated that the State was under no obligation to pay for work compulsorily performed by prisoners who should, however, be encouraged at the same time to work well, by being offered recompense, not necessarily of a pecuniary character. (See "Deliberations" already mentioned). This traditional point of view was abandoned to a great extent in the resolution on prison labour adopted by the Congress held in The Hague in 1950. See *PROCEEDINGS OF THE TWELFTH INTERNATIONAL PENAL AND PENITENTIARY CONGRESS*, Berne, 1951, vol. II.

the artificial character of prison labour, and the gap between it and free labour has, as a result, been in no way reduced. As an example it can be said that the excessive theoretical emphasis placed by some penologists on the vocational training of prisoners has reinforced the antagonistic attitude of some trade unions towards prison labour. This attitude is not justified. Briefly, at the present juncture, it would seem more advisable to advocate a closer parallelism between the two kinds of labour than to suggest the creation of vocational and training programmes which the organization of prison labour, mostly based on the State-use system, can very seldom afford.

This isolation has led in some countries to the creation of prison industries more or less artificially maintained. A close investigation of the official statistics of some prison industries would show that the results obtained from this costly system fall far below expectations. The fact remains that no prison industry has as yet been able to provide steady work for all prisoners and to pay all of them an equitable remuneration.

III. THE CHARACTER OF PRISON LABOUR

These two divergent trends, one aiming, under the impact of a progressive but somewhat academic penology, at the improvement of prison labour conditions, and the other, at keeping systems of prison labour apart from labour in general, raise the question of the character of prison labour.

Some experts have regarded the question whether or not prison labour is a right of the prisoner, an obligation imposed upon him or an aspect of the treatment, as a rather academic one, the discussion of which serves no practical purpose. Without denying that the prevailing conditions in prisons do not allow too much room for idealistic schemes, it seems reasonable to maintain that the character of prison labour must be determined before the nature of its organization can be decided upon. Moreover, experience shows that more often than not the so-called academic questions are actually basic questions, which cannot always be solved by an empirical or administrative approach. These approaches are correct when they conform with certain basic social principles and not otherwise. This seems to be applicable to prison matters where more often than not narrow administrative approaches have

led, as far as prison labour is concerned, to not very satisfactory results.

The other school of thought although admitting the necessity of the discussion here envisaged, considers that the recognition of a right to work would create serious difficulties since many an administration would be unable to provide adequate work all the year round to all prisoners. Finally, there are still some who maintain the old point of view that prisoners have no rights but obligations, among which that of working is one of the most important.

1. *Prison Labour as a Right of the Prisoner*

Although widely accepted the thesis of the prisoner's right to work is not always interpreted by its supporters in a uniform way. For some, this right is an aspect of the general right to work that everyone has, for others it is a special right belonging to prisoners as such, and for others again it is a moral right.

The first point of view is in full accordance with article 23 of the "Universal Declaration of Human Rights" adopted by the United Nations which lays down that everyone has the right to work and the right to equal pay for equal work.⁶ In principle, except as otherwise provided under the criminal law, the fact of becoming a prisoner does not cancel or suppress these rights. Modern penology is against the unnecessary suppression of individual rights. Moreover, the protection of society so often invoked to justify policies lacking a solid foundation, is not reinforced by suppressing the right of the prisoner to work. Actually, individual rights are recognized in the case of everyone, regardless of his social or moral condition and of whether he has previously made use of these rights. In this respect the fact that the prisoner never worked before does not mean that he may be deprived of the right to work. On the other hand, rights never have an absolute character. Each right implies the fulfilment of

⁶ Article 23 reads as follows:

"(1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment;

(2) Everyone, without any discrimination, has the right to equal pay for equal work;

(3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection;

(4) Everyone has the right to form and to join trade unions for the protection of his interests."

certain social functions and consequently responsibilities. Therefore, as any other right, the right to work is related to other rights and social functions and thus occasionally subordinated, especially where its practical use is concerned, to other rights or functions or even circumstances. These limitations, however, in no way affect the recognition of the right concerned or prevent its exercise within those limitations. This subordination and these limitations appear automatically as soon as a person is convicted and sent to prison. At that moment the right of Society to punish him and deprive him of his freedom prevents the prisoner from fully exercising, among others, his right to work, but in no way deprives him of this right as such. There, rather than somewhere else, lies the solution of the so-called competition question which, accordingly, is not an economic but a human rights question. This character has been persistently ignored by trade unions and employer's associations which apparently rationalize their emotional attitude by invoking economic competition.⁷

2. *Prison Labour as a Special Right of the Prisoner*

The thesis of a special restricted right to work seems not only to transform into a "special" right what are no more than temporary limitations of the general right to work, but also to contradict the aims of modern penology since modern penology does not regard it as necessary for the protection of society and the rehabilitation of prisoners that the latter be treated, as far as human rights are concerned, as second class citizens.⁸

⁷ See also *LE TRAVAIL PÉNITENTIAIRE EN FRANCE* by CHARLES GERMAIN, in *INTERNATIONAL REVIEW OF CRIMINAL POLICY*, United Nations Publications, No. 6, 1954, p. 55-56, which states that from a social as well as from an economic point of view, it cannot be forgotten that the majority of prisoners were free workers before they were incarcerated, and that the fact of having been convicted does not exclude them either from the community or from participating in the competition for work. The same point of view has been maintained by J. PINATEL in his *PRÉCIS DE SCIENCE PÉNITENTIAIRE*, Paris, 1945, where it is said that prisoners were workers before being sentenced and that their previous competition as such is replaced by their competition as prisoners.

⁸ The fact that some criminal codes still maintain, in varying degrees, the point of view that prisoners should be deprived of their civil rights in no way invalidates the point of view expressed which refers to a social right. Anyway what in the past was a general rule would be considered at present as an exception affecting only the political rights of certain offenders.

The thesis of the prisoner's moral right to work may be considered as a compromise between the thesis that the prisoner has a right to work and the thesis that he is obliged to work. Although there is a relationship between law and morality, the introduction of a moral element in the already complex problem of prison labour makes its solution even more difficult. Morally speaking the granting of this right puts the administration under a corresponding moral obligation of providing steady work for prisoners. But—and the "but" is important—it is very well known that administrations are only too often unable to provide such work. Thus, by failing to fulfil what it regards as a moral duty the administration necessarily lowers its own moral standards, and indirectly those of the prisoners.

3. *Prison Labour as an Obligation of the Prisoner*

According to another school of thought prison labour is an obligation of the prisoner and as such submitted to a special organization which does not necessarily mean the application of regulations similar to those governing free labour. This thesis is not a new one and historically has always been more or less related to the view that prison labour is part of the punishment inflicted upon the prisoner. More recently, the fact that in some countries, not always having, strictly speaking, a democratic regime, the general obligation of working has been imposed by law, has been considered as supporting this thesis. Time and space prevent the writer from fully examining the questions arising out of this legal obligation. Suffice it to say that on the basis of past and present experience this legal obligation to work has eventually led under certain regimes to more or less disguised forms of forced labour, and therefore to a denial of several human rights. Modern penology without denying that prisoners should work, thinks that their work should not take the form of an obligation which, in any case, not all administrations can enforce because of the lack of work.

In this connexion reference is made to paragraph (2) of Article 29 of the "Universal Declaration of Human Rights" which reads as follows: "In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting that just requirements of morality, public order and the general welfare in a democratic society."

4. *Prison Labour as Treatment*

More recently it has been maintained that prison labour is part of the treatment of prisoners. This point of view has also been combined with that of the right of the prisoner to work. This peculiar combination of somewhat contradictory elements makes it still more difficult to determine the character of prison labour.

Without denying that in some cases, or for some groups, a particular kind of work may have a therapeutic character, it should also be admitted that there are other cases where for treatment purposes some prisoners should be excluded from working. Moreover, the great majority of prisoners were working before they were convicted and know, some of them well, how to work. For these, and in particular for those who before coming to the prison were something more than manual workers, the unskilled work that the majority of prisons are able to provide can hardly be considered as treatment.

To the writer, the generalization of the term treatment, at present almost a slogan, implies a confusion between regime and treatment. The former refers to a general or prevailing system of life, i.e. to a pattern of life, the latter to a particular way of dealing with something. Accordingly, working is no more than an aspect of the general structure of life and not a part of a general treatment. The conclusion would be that, apart from particular cases or groups, prison labour is part of the normal life of a prison in the same way that working is part of the normal life of society. There is no reason why the activities of a prisoner should not be made to conform as much as possible to those of the free community. This will not only facilitate his rehabilitation, but also the integration of prison labour, as a social-economic activity, within labour in general. This integration is rather difficult if prison labour is considered as treatment. Further, this concept would imply: (a) that all prisoners are in need of treatment which, fortunately, in spite of some schools of thought, is not the case, and (b) that the questions of training, remuneration, working conditions, etc., at present dealt with as labour questions, should be considered from the point of view of treatment, thus requiring an entirely different approach.

IV. THE PRESENT ORGANIZATION OF PRISON LABOUR

From the foregoing it can be concluded that the organization of prison labour has been de-

termined by three closely related factors: the character attributed to it; the negative if not hostile attitude of organized free labour; and the fact that more often than not prison labour has been discussed by prison administrators only, most of them obviously in favour of already established policies or wary of possible political and trade union reactions.⁹ The combined effect of these elements has maintained the isolated condition of prison labour, so isolated that in some countries the existence of a prison industry organization as something apart has not only been accepted, but encouraged and praised as the last word in penology.

On the other hand, this isolation has not excluded some parallelism between the respective development of both forms of labour. Such parallelism, however, is the result of the action of different elements shaping these forms of labour and not the consequence of the beneficial influence of organized free labour on prison labour. Thus while the origin and increasing power of organized free labour was the consequence of social changes, and these changes affected not only workers but society in general, the evolution of prison labour although related as a remote appendage to those changes, was determined more by the influence of such new disciplines as criminology, psychology and sociology. Consequently, after an era of neglect and abuses prison labour came under closer scrutiny and eventually conditions improved. At a more recent stage, vocational and professional training were advocated and to a certain extent introduced in some prison systems. As a reaction against existing abuses the participation of private enterprise in prison labour organization was discouraged and the role of the State in this organization more and more stressed.¹⁰ Although well intentioned this change of policy did not take into account that not the systems by themselves but the way in which they were applied were to blame, and that, with increasing stress on the role of the State, prison labour inevitably became more and more artificially organized and therefore, more isolated from free labour and less suitable for the rehabili-

⁹ This attitude is more marked in countries where the heads of prisons administrations or institutions are political appointees.

¹⁰ Detailed information about systems of organizing labour can be found, among others, in *SHOULD PRISONERS WORK*, 1931, by L. N. ROBINSON; *FUNDAMENTOS DEL TRABAJO PENITENCIARIO*, Madrid, 1952, by CALIXTO BELAUSTEGUI, and *PRISON LABOUR*, New York, by R. ENGLAND, United Nations Publication, Sales No. 1955, IV. 7.

tation of prisoners. Slowly but steadily the State-use system emerged as the preferable one. Although its acceptance in a general way suppressed certain forms of exploitation, it led inevitably to some more subtle forms of exploitation and as a result of the inability of the State to provide steady work, to greater idleness in the prisons. This idleness has been more or less successfully concealed by identifying occupational tasks with constructive work. The question therefore arises whether the State-use system deserves the preference bestowed upon it.

With respect to this system it can be said:

(a) that the increasing acceptance of the State-use system can rather be explained by the pressure exercised upon prison administration by the so-called competition problem than by the progressive character of the system;¹¹

(b) that from a psychological point of view this system does not bring the prisoner closer to society. On the contrary, in making the prisoner work exclusively for the satisfaction of the State's needs, which more often than not are represented by a restricted number of unskilled tasks, the feeling of frustration, if not of antagonism, is either maintained or increased;

(c) that the State-use system does not prevent competition, and although limited to work having a low industrial grade, the annual reports of many prison administrations register complaints from organized free labour;¹²

¹¹ See ROBINSON and ENGLAND already mentioned. More definitely, for TAFT, the purpose of the State-use system has been to avoid competition with free industry but this purpose has only partially been achieved. See *CRIMINOLOGY*, N. Y., 1942, p. 470-471.

¹² A typical example of the inconsistency of some of these complaints is that submitted by free labour against the manufacture of "espadrilles" by the prisoners of a French Central Prison. Twice, the complaint was investigated and twice rejected. See *RAPPORT GÉNÉRAL DE L'ADMINISTRATION PÉNITENTIAIRE POUR L'EXERCICE 1955*, MINISTÈRE DE LA JUSTICE, 1956, p. 63. The history of "competition" or rather "protectionism" in the U.S.A. is even more inconsistent. As a result of a series of political interests occasionally disguised as "reform" efforts, since 1929 prison labour has been deprived of its interstate character and the State-use system has emerged as the prevailing one in the organization of prison labour. A study of the tables contained in "Prison Labour in the United States, 1940", U.S.A. Department of Labour, No. 698, 1941, will show that not competition but protection is the only possible conclusion. In 1940, the total value of prison production in the manufacturing industries was less than half (0.38) of 1 percent of the total value of similar private production. It should be noted that although statistics show a rather impressive variety of prison industries, the main characteristic of Prison Industry seems to be the manufacture of automobile license tags and idleness. If economic

(d) that as stated the State-use system does not prevent idleness. In other words, this enforced idleness results either from the limited number of State needs that can be met by prison work or from the surplus production of prison goods to satisfy this limited number of needs. In order to break this vicious circle an administrative device was introduced, that of forbidding public institutions or agencies to acquire from private enterprises what might be acquired from prison industry. Experience has repeatedly shown that such a compulsory system has never yielded the expected results.¹³ These difficulties have originated in some countries from the existence of a complicated and costly administrative machinery in charge, among other things, of the diversification and supervision of workshops and prison goods, of the co-ordination of State-needs, and of the enforcement of the compulsory acquisition by public institutions and agencies of prison goods.

(e) that for a variety of reasons not all States can afford this system. Typical cases may be found in the past and present history of prison labour in the United States; also in many a Latin American country.

The more or less general acceptance of this system has apparently suffered a setback at the United Nations Congress already mentioned, where the preference for it was upheld only by a vote of 15 in favour, 14 against and 1 abstention.¹⁴ Such a narrow margin is rather encouraging and shows that a new change is taking place in the generally accepted system of organizing prison labour. Among other aspects of the new trend may be mentioned what has been called the private free-release system by which prisoners nearing the end of their term are permitted to work for private industries under working conditions, including wages, very similar to those of free labour.¹⁵

reasons cannot explain the "problem of competition" what else can they explain?

¹³ See bibliography already mentioned. In practically all annual reports issued by prison administrations references may be found to the difficulties encountered as a result of the impossibility of enforcing this condition.

¹⁴ At the time of voting several delegations refrained from participating in it. The representatives of Belgium, Sweden and Venezuela opposed the specific preference to the State-use system. See *REPORT ON FIRST UNITED NATIONS CONGRESS ON THE PREVENTION OF CRIME AND THE TREATMENT OF OFFENDERS*, United Nations Publication, Sales No. 1956. IV. 4, pp. 32-33. Hereinafter referred to as the United Nations Congress

¹⁵ See R. ENGLAND, *op. cit.* p. 12.

The fact is that even in highly industrialized countries the State-use system has not prevented serious shortages of work despite the diligent efforts of the prison authorities. In issuing orders the Departments concerned do not always take into account the priority assigned to prison work and though the intention is that there should be no competition between prison work and the free market, the latter may however compete with and seriously affect the weak economy of prison labour. The case of mat-making was a typical one in the English prisons. Furthermore, most prison work consists of bag, brush and tag making.¹⁶ In this respect it is interesting to note that "the making of new bags could be carried out entirely on machines, with which the prisons are well equipped, and this is a reasonably skilled and interesting work. But all too often, for long periods, expensive batteries of power machines stand idle while the work is done by hand to make the order last out till the next one is received".¹⁷ According to the American Prison Association: "Unless we can contrive to solve the prison labour problem we must abandon the idea that we are operating institutions of correction and reform and that adult prisoners can be released from such institutions better and not worse than when they entered. Prison industries have, generally speaking, been a dismal failure . . . surveys have shown the almost total inefficiency of the industrial system of our institutions".¹⁸ According to Sutherland and Gressey "no other system has resulted in such strenuous efforts to keep the prisoners out of particular industries as has the State-use system".¹⁹

The situation seems to be far less satisfactory in those countries where for various reasons there is a considerable gap between prison labour as it appears on paper, i.e. in the laws and regulations,

¹⁶ See *REPORTS OF THE COMMISSIONERS OF PRISONS*, London, H.M.S.O., for the years 1948 to 1954.

¹⁷ See *THE ENGLISH PRISON AND BORSTAL SYSTEMS*, by SIR LIONEL FOX, London, 1952, p. 181.

¹⁸ See *A MANUAL OF CORRECTIONAL STANDARDS*, New York, 1954, p. 273; also RICHARD A. MCGEE, *PRISON RIOTS AND DISTURBANCES*, New York, 1953, who mentions the enforced idleness of about forty percent of the prisoners as far as constructive work is concerned. According to the reports by the Federal Bureau of Prisons, whose efforts for a progressive prison system are well known, only a small number of federal prisoners can be absorbed by the Federal Prison industries. Out of 20,486 prisoners only an average of 3,806 were employed. See *NEWS LETTER, FEDERAL PRISON SERVICE*, Washington, D.C., June 1956, p. 3.

¹⁹ See *PRINCIPLES OF CRIMINOLOGY*, New York 1955, p. 521.

and as it is in reality. In other countries, the success of penal institutions is measured by its economic self-supporting capacity. The greater the latter, the greater the success. Such an approach which characteristically is praised by certain administrators, merely reflects a distorted concept of prison labour in particular, and of rehabilitation in general. Finally, there are countries where the prison labour is not provided at all by the prison administration and it is up to the prisoners themselves to obtain work from outside through their families, friends or more or less recognised "agents".²⁰ For several reasons prison statistics do not always reflect the existing situation and all too often they offer a deceptively favourable picture as may be seen when these figures are carefully checked or the institutions visited. In most cases maintenance work and other domestic occupations are considered as prison labour; secondly, the exaggerated number of prisoners assigned to the same domestic or occupational task would surprise the uninitiated.

The conclusion would be that with some exceptions, mostly represented by limited programmes of pre-release work for private employers, the existing systems, among which the State-use system is the most widely applied, have failed in spite of the efforts made in some countries. If, from a social and economic point of view, labour is one of the most important elements in social rehabilitation, in which the development and strengthening of family responsibility is more than relevant, it would seem that the present organization of prison labour must be replaced by another more in accordance with the purposes of modern penology. The present artificial character of such labour merely intensifies the difference between life in and out of prison and enlarges the gap between the prisoner and society by preventing the former from feeling that at least through his work he is still part of that society.

V. THE BASIC ELEMENTS IN THE ORGANIZATION OF PRISON LABOUR

From the foregoing, it would seem that the present organization of prison labour is fundamentally based on the following assumptions:

(a) as a group apart, prisoners are persons with no rights or with as few rights as possible;

²⁰ This is practically the case in some of the prisons of a number of Latin American countries such as Mexico, Columbia, Ecuador and Panama.

(b) prison labour is something different and economically and socially apart from labour in general; and

(c) the prevailing methods of organizing prison labour are therefore not part of the structure of a modern prison system but administrative or budgetary techniques maintained for historical and political reasons.

The fact that with some exceptions these three elements still prevail in the organization of prison labour shows how contradictory and isolated the latter remains in the field of modern penology and how useless it is to advocate the psychological and psychiatric treatment of prisoners when the majority of them are kept, especially in those huge maximum security prisons, in forced and barely disguised idleness. By itself, psychologically, idleness is a disturbing if not a corrupting element. Consequently, what may be achieved by a psychological or psychiatric treatment is destroyed by the idleness of every day life. In fact, we have here one of the greatest contradictions, if not fictions, of modern penology. In the writer's opinion, were prison labour rationally organized the majority of prisoners would need neither that kind of treatment nor some of the costly special vocational programmes advocated for them. It would be no exaggeration to say that while modern penology advocates modern methods for the individual treatment of prisoners, it still maintains obsolete methods for the organization of prison labour.

The basic concepts for a rational organization of prison labour are: (a) prisoners are persons having rights and therefore the right to work; (b) prison labour is part of labour in general and consequently part of the general economy; and (c) the organization of prison labour is part of the structure of a modern prison system, and not an administrative or budgetary technique.

(a) THE RIGHT OF THE PRISONER TO WORK

As stated under Chapter III, Section 1, the right of the prisoner to work is not an absolute right. Fundamentally, it implies equal pay for equal work and the applications of all the social regulations dealing with insurance, safety, health and other working conditions. On the other hand, owing to the particular juridical situation created between the prisoner and the State, prisoners are not entitled to select their work or change their place of work or workshop, or refuse without justification a certain kind of work. In short, they

cannot exercise their right to work when this exercise implies a freedom which is lacking.

The application of the right to work means the existence of real economic wages enabling prisoners to support themselves, help their families and if possible to save some money.²¹ None of the existing remuneration schemes can meet any of these needs and responsibilities and even less all of them. Why then is there such a flagrant contradiction between reality and the proclaimed aims of the remuneration of prison labour? The answer is the present artificial organization of prison labour.

The possibility of a real economic wage has been considered as incompatible with the artificial character of the prison community in which the economic conditions of outside life can no more easily be reproduced than its social conditions.²² Without denying the unusual character of prison life, especially in the walled prisons, one may ask if the aim of modern penology is not to reduce as much as possible this unusual character, instead of maintaining it. If so why should this artificiality be increased by adding the artificial organization of prison labour? Moreover, an economic wage will not automatically mean the reproduction in the prison of outside social conditions but merely the application of the principle of equal remuneration for equal work. This application does not mean that the exercise by the prisoner of his right to work is equal to that of the free man. Moreover, the disposal of the remuneration received is controlled. The conclusion seems to be that one thing is to reduce as much as possible the artificial character of prison life, and another to reproduce in the prison outside social and economic conditions.²³

²¹ According to recommendation VII on Prison Labour of the First United Nations Congress "Prisoners should receive an equitable remuneration for their work. This remuneration should be at least such as to stimulate keenness and interest in the work. It is desirable that it should be sufficient to enable prisoners at least in part, to help their families, to indemnify their victims, to further their own interests within the prescribed limits and to set aside a part as savings to be returned to them on discharge, where desirable through an official or agency". The inclusion of the obligation of indemnifying the victims was opposed by a substantial number of countries.

²² See, SIR LIONEL FOX, *op. cit.*, p. 198.

²³ The term "artificial" very often used to refer to prison life seems to be somewhat inadequate. Is it the life led in some monasteries or that imposed by military and navy service also artificial? This distinction between these kind of lives and that of prison seems to consist in that prison life automatically implies a lower-

Against the principle of equal remuneration it has also been stated that as workers, prisoners are unskilled or incompetent, and that in spite of these and other shortcomings, the administration has to employ them. There again we are afraid that the desire of maintaining existing systems or practices has led to a generalization of facts with little or no ground for it. That a great number or even the majority of prisoners are unskilled is true but the same applies to the majority of free workers. After all, prisoners reflect in more than one aspect, the prevailing general, social, economic and cultural conditions. In any case, as long as prison administrations, especially those of highly industrialized countries are, with minor exceptions, unable to offer to prisoners other work than mat, bag, brush and tag making it would seem rather unjustified to complain of the lack of skill among prisoners. As a contrast it can be said that in some countries, like Spain, short apprenticeship courses have been organized in order to improve the skill of certain prisoners. Finally, although freer than prison administrations, private industry is not always completely free to dismiss the incompetent worker or clerk. In many a country, private industry is at present compelled not only to take but even to keep incompetent people unless it is ready to meet objections from a trade union or to pay some indemnities.

It is the social and economic inability of the existing remuneration schemes that explains the survival of discharged prisoners' associations, the existence of some more or less charitable aid-on-discharge practices and the necessary increasing responsibility of some social services.

Whatever their form, and in spite of their evolution toward the social assistance field, the functions of discharged prisoners' associations are still mostly determined by the historical impact of their origin: charity and benevolence. Although as virtues, both of them are indeed very much needed, one wonders to what extent they are effective in the social readjustment of the prisoner who after several years of imprisonment leaves the institution with a small sum of money as the whole product of his work. Anyone familiar with the problem knows that for a variety of reasons, ex-prisoners do not always react a ex-

pected by well-intentioned people. Some of them consider that the assistance received is barely a compensation for what they did not receive as wages or remuneration during years and years of prison labour. Many of the problems encountered by ex-prisoners and discharged prisoners' associations would be considerably reduced if during their incarceration the prisoners had been able to support their families to some extent, and upon release had still at their disposal a reasonable amount of money, acquired through their own work.

In some countries where some penological progress has been made, prison administrations grant loans to certain released prisoners or give them so-called "gate-money". This consists of a discharge gratuity given to a prisoner upon release or parole in order to supplement his scant earnings.²⁴

In the United Kingdom, an exceptional prisoner may earn 4s. a week but more would be rare. The average is about 2s. In the United States the scale ranges from \$0.02 to \$0.50 a day among the different States. In the prison industries of the United States Federal Prison Administration the maximum which may be earned in some prisons, which is not the average earned, seems not to exceed \$30.00 or \$40.00 monthly. In both countries the State-use system is the prevailing one.²⁵

This inadequacy of the remuneration of prison labour inevitably increases the responsibility of some social services which have to take over the support of the family when the bread winner is sent to prison. It seems reasonable to conclude that the burden imposed upon these services would be alleviated if the prisoner were able to contribute for the support of his family out of his prison labour wages.

(b) PRISON LABOUR AS PART OF LABOUR IN GENERAL, AND THEREFORE AS PART OF THE GENERAL ECONOMY

As part of labour in general and within the accepted rules governing it, prison labour is en-

²⁴ Interesting information about "gate-money" may be found in DISCHARGE GRATUITIES IN STATE CORRECTIONAL INSTITUTIONS by the JOHN HOWARD ASSOCIATION, Chicago, 1953. The legal maximum authorized in 21 jurisdictions is \$20 in case of discharges but the actual payment is \$10. For parolees, the amounts granted are usually lower.

²⁵ See, SIR LIONEL, *op. cit.*, p. 199. J. HOWARD ASSOCIATION, *op. cit.* where it is stated that in some States it is not possible for the inmate to earn enough to buy cigarettes. For the United States Federal Prison Administration see the annual reports.

ing of status and living conditions. To what extent this lowering should be considered as "artificial" raises the more general question of the character of prison life.

titled to any kind of competition. The problem of the competition between these two kinds of labour is partly an emotional one and partly the result of the artificial character given to prison labour. If prison labour were integrated in labour in general the first task should be to make the organization of prison labour as similar as possible to that of free labour. This similarity, which is not identity is imposed by the fact that in both cases we are concerned with the same kind of human right: the right to work. Therefore within the limitations previously pointed out, the general rule should be that what applies to labour outside the prison applies to labour inside the penal institution. Consequently, prison labour should not be cheaper than free labour. If, for well known reasons prison labour is not highly skilled, that lack of skill should not prevent prisoners from participating in full in less-skilled jobs and from being paid the same amount for the same kind of work. Numerically this participation is no problem. As stated, the question of competition is a question involving a human right. In this respect prisoners, as workers, are entitled to compete with other workers provided that in both groups the working conditions are similar. Failure to recognize that principle would be tantamount to admitting that every time that for one reason or another the problem of competition arises between individuals or groups the rights of some of those concerned must be suppressed, usually the rights of the less privileged or protected individuals or groups. Apparently these questions have not been realized by the trade unions, which seem to think of prisoners as a group apart, even if the day before their conviction some of them were members of a union.²⁶

²⁶ This attitude has sometimes been denied by some representatives of trade unions. As far as England is concerned some cases of denial have been recently mentioned by C. H. ROLPH in *PRISONS AND PRISONERS in THE NEW STATESMAN and NATION*, February 2, 1957, pp. 135-142. Although interesting the statements of the representatives mentioned by Mr. Rolph are rather unconvincing. The question is not whether trade-unions may occasionally accept some ex-prisoners but whether they are not supposed to do nowadays something more than protecting the wages or benefits of their own members. Curiously enough, antagonistic attitudes against released or parolee prisoners are also found in the United States in trade-unions or organizations when they are dominated by gangsters or a particular mob. There again, this raises the question of the moral and social responsibility of trade organizations. The question of racketeering in some American trade unions has led the A.F.L.-C.I.O. to envisage the adoption of a moral code in order to prevent the infiltration

Although, employers also seem to complain about prison labour competition, their protests are less founded than those of trade-unions. Anyone comparing the output of prison labour and that of free industry in a given country, can easily conclude that this competition does not exist or is quite insignificant.

In sum, if the question of competition continues to be raised as at present, it would be worth ascertaining whether the competition is not set by free labour rather than by prison labour. It is rather pathetic to see powerful labour organizations trying to prevent or to reduce to insignificant proportions the rehabilitation of prisoners through constructive work. Apparently, for the unions, bag, brush and tag making are good enough for the rehabilitation of offenders. All too often when prison labour is discussed this question of competition is either avoided or glossed over. Fear of political or administrative trouble prevents those concerned from examining a problem which is one of the stumbling blocks of prison labour.

The rehabilitation of prisoners is a task which cannot be achieved by the Prison Administrations only, however well equipped they may be. Therefore, it seems reasonable to conclude that labour organizations have at present wider responsibilities than merely protecting the privileges and welfare of a particular social group, a function which by itself, if narrowly interpreted will tend to create new forms of social aristocracy.²⁷

Keeping public opinion informed will help, though it cannot solve the problem. Good results can hardly be achieved unless the question is openly discussed with representatives of trade and employers' unions and organizations. It must be remembered too that the question to be discussed is not exactly that of competition but that of the co-operation of these groups, as part of their social responsibility, in the rehabilitation of offenders.

Therefore, it would seem that the methods of organizing prison labour should be, as far as cir-

of criminal elements into the unions. At present the United States Congress is conducting an inquiry into racketeering in certain of the unions.

²⁷ Related to this question is that of facilitating the employment of parolees and discharged prisoners. Although, in some countries some progress has been made, the fact is that employers, as a general rule are more than reluctant to co-operate in the rehabilitation of offenders by hiring people on probation or parole or discharged prisoners.

cumstances permit, similar to those used by free labour. As far as possible, private industry should be brought in because, among other reasons, it is the only kind of industry which can pay regular wages and at the same time offer adequate equipment and professional training.²⁸ Unless great expenses are incurred no State-use system is able to renew more or less periodically the costly machinery used by private industry. This machinery is the only one enabling prisoners to acquire professional training and skill in highly industrialized countries. More often than not when visiting prisons one can see that either the machinery is obsolete or if modern it is partly unused for the simple reason that there is not enough work for the prisoners. In sum, for a variety of reasons, the State is very seldom able to keep pace with private enterprise as far as administration, organization and production are concerned.

It is largely because of this lack of correlation between inside and outside methods and techniques that the special programmes on vocational and professional training were introduced. In fact, as previously stated, with a rational organization of prison labour their need and importance would be considerably reduced.

Public work can also be considered as a suitable field for prison labour, and even the use of prisoners as workers or labourers on private farms and plantations, construction work, etc. We are fully aware of the abuses committed in the past under these systems but we firmly believe that not the system itself but the way in which it was applied was wrong. Mostly these abuses were and still are the results of the following factors: (a) the belief that prisoners were not entitled to human rights; (b) that cheap labour supply should be obtained wherever available; and (c) discrimination. Where all or any of these factors exist lease systems should be excluded. They are applicable only in those countries where there is real respect for the human rights of others, whether prisoners or coloured people.

Another method would be that of letting the prisoners, or rather certain prisoners, organize themselves into workshops co-operatives. Although imperfectly applied this method i the

prevailing one in some prisons of Mexico and Colombia.²⁹

Mention should be made here of the compensatory labour system and of the redeeming labour system, though these systems are ways of reducing the term of imprisonment by means of labour rather than methods of organizing prison labour. Both systems have historical antecedents, possess some identical features and are much in favour in countries in need of economic and industrial reconstruction. Unless prison labour is duly remunerated and protected, these systems inevitably lead to exploitation and abusive practices. By the compensatory labour system the prisoner gives extra hours of work. This overtime work is computed in different ways in lieu of imprisonment. The ways in which the remuneration of this work is made, and the kind of work provided, also vary.

In the case of the redeeming work system a specified number of working days are considered as equivalent to so many prison days and are deducted from the prisoner's sentence.³⁰

As part of national planning and economy: irrigation, dam construction, reforestation, soil conservation; agricultural experimentation, husbandry, etc., prison labour can play an important role. This role should not, however, lead to the exploitation of prisoners or transform open institutions into movable labour camps.³¹

²⁹ Apparently in these countries the method originated because of the inability of the Administration to furnish work. This particular origin should not exclude the use of this method, which offers many possibilities if properly organized.

³⁰ This system which can be organized in a variety of ways is at present widely applied in Spain where under certain conditions every two working days are computed as a prison day. For further details see *CÓDIGO PENAL ESPAÑOL*, art. 100, and *REGLAMENTO DE LOS SERVICIOS DE PRISIONES*, official edition, 1956, especially chapter VII. As far as prison labour goes, Spain is one of the few countries where: (a) prison labour is considered as a right of the prisoner, and therefore part of labour in general; and (b) the point of departure for the remuneration is the outside salary. In the piece-price system the remuneration cannot, in any case, be less than 75% of what is paid by private industry. For further information see "Memoria, 1955" *DIRECCIÓN GENERAL DE PRISIONES*, Madrid.

³¹ Occasionally open labour camps are considered as real open institutions. In this connection the writer recalls that he visited an Indian institution which was announced to him as a model open institution. Although constituting by itself an evident progressive step what was found there was a well organized labour camp with more than 2,000 prisoners used in the construction of public works.

²⁸ Private industry is already used although in a limited way, in some French penal institutions.

One of the essential elements in the organization of prison labour is that of providing prisoners with work all the year round. The continuity of work can be maintained only by considering prison labour and prisoners as part of the general economy and as workers. With very few exceptions the State-use system fails to provide enough work.

As a first step national or regional needs should be taken into account as far as possible by prison authorities when organizing work programmes. In turn, the authorities dealing with national or general work programmes should consult the prison authorities in order to establish the closest possible co-ordination. This has been done in highly industrialized countries in war-time when prison labour was to a great extent incorporated in the general war effort of the country. There is no particular reason why such co-ordination should not be maintained in peace periods.

The second step should be the discussion of these programmes of work with trade unions and employers' associations on the basis of the recognized fact that prisoners are workers and as such entitled to participate in labour in general.

From these discussions a diversification of prison labour may result either through participation of prisoners in public works or private enterprises. The Prison Administration too may itself undertake the kind of work for which the penal institutions are well suited.

The incorporation of prison labour in labour in general will reduce, at least in many a country, the importance attached by some penologists to the question of vocational and professional training. There again a distinction should be made between the highly and the less-developed countries. For the former both kinds of training are of more immediate importance than for the latter. In the so-called less-developed countries, the majority of prisoners come from backgrounds where only a relative amount of vocational training is needed. It must be not forgotten that with some exceptions, mostly habitual and professional offenders, discharged prisoners usually return to their former backgrounds where they do not have the opportunity to utilize elaborate vocational training of the type often advocated in, the so-called western institutions. Thus, although vocational training is indeed desirable it must be of a kind that is not beyond the requirements of the

surroundings or circle in which the individual usually lives. This environment determines, directly or indirectly, the skills and needs of the different members of the group. This correlation between prison labour, vocational training and environmental and individual needs has occasionally been ignored by ambitious programmes of labour and vocational training.

The conclusion would be that although integrated in a particular economy: national, regional or local prison labour is ultimately not a question of output but of relationship between individual needs and skills and environmental requirements. Therefore, in predominantly agricultural countries, it would be erroneous to transform penal institutions into something like factories simply because there is a national plan of industrialization. In large countries, penal institutions have always a rather local character which to a great extent comes from the prisoners themselves. Consequently, if the region is agricultural, it will do more harm than good if prison labour is organized on an industrial basis. This agricultural origin and occupation should be taken into account also as far as training is concerned. Thus, whereas in highly developed countries agricultural machinery would be necessary, in less developed countries, while such machinery should not be ignored, training in better cultivation methods, crop rotation, the proper use of fertilizers, insect control, etc., would probably be more useful for the individual and the group.

(c) THE ORGANIZATION OF PRISON LABOUR IS PART OF THE STRUCTURE OF THE PRISON SYSTEM

Although prison labour should be considered as part of labour in general and of a certain economy its organization has to take into account the restrictions resulting from the proper functioning of a given prison system. These restrictions are the logical consequence of the juridical situation in which the prisoner is placed as a result of his conviction. The main restrictions are imposed by: (i) the functions of custody, security and control; (ii) the classification of prisoners; (iii) the length of their sentences and the application of other programmes, and (iv) the maintenance of the institution.

(i) Historically, custody, security and control were considered as the main functions of any prison system. This conception led to the walled

prison, with all that it implies, as the perfect expression of penal institutions. Modern penology has shown that closed institutions as an exclusive or general rule are unjustified.³² In fact, the classical walled prison always raises serious difficulties in the organization of prison labour. This is why the First United Nations Congress recommended that "In planning prison labour programmes, greatest possible reliance should be placed on the use of open institutions, in order not only to provide the variety of occupational opportunities afforded by open institutions but also to enable prison labour to be carried out under conditions approximating to those of free labour".³³

A rational organization of prison labour is only possible if the number of open and semi-open institutions is increased and that of walled institutions reduced to the necessary minimum. The two first require a limited custody, security and control which if intelligently applied will in no case jeopardize the organization of prison labour. In the case of walled institutions these functions should be understood and applied somewhat differently from the way they are at present in many cases.

(ii) The classification of offenders usually has an important bearing on the internal organization of prison labour. We cannot here take into account all possible classifications. All we need to say is that whatever their purpose and whatever the character of the offenders, the earnings of prisoners should always be the same as long as they do the same work and produce the same output. The system of increasing the scanty remunerations for the simple reason that the prisoner has been "promoted" for good behaviour to a higher category requires revision. In spite of its rather wide acceptance there are serious doubts about its advisability. Although related, character, behaviour and work are three different things, and it seems sound to apply the principle of equal pay for equal work. Character and be-

haviour can be correctly evaluated and rewarded without using prison labour as a premium.³⁴

In connexion with the classification of prisoners there is the question of creating appropriate prison labour for special categories of offenders such as professional classes, mentally abnormal and work-shy individuals.³⁵

With respect to mentally abnormal prisoners it would seem that not all of them will require special work programmes, and that for those needing them it would be preferable to create special institutions where labour would be part of the treatment. The question of professional classes is too complex to be fully examined here. Historically there are antecedents showing that the social or professional condition of the prisoner was taken "into account when he was sent to prison". In principle, we are not very much in favour of the creation of such special programmes. First, because if social or professional conditions do not mean anything before the criminal law, the same criterion should be applied in the execution of the penalties imposed; and secondly, because it is not always easy to trace a clear dividing line between professional and non-professional classes. On the other hand, we are fully aware that the existing prison conditions in some countries amount to an added penalty when professional people are submitted to the general prison regime. This is true and proves that the regime and the prison system urgently need remedy. There again, some prefer to make an exception pending the improvement of the existing general conditions. Actually the admission of the exception under consideration proves that in the large majority of cases prisons are still far below the standard minimum rules adopted by the United Nations Congress. In our opinion a system of exceptions inevitably leads to some abuses.³⁶ Therefore, rather than advocate excep-

³⁴ Here again the principle that prison labour is part of labour in general should be maintained. Therefore if the remuneration of ordinary labour is in principle independent of the character and behaviour of the workers there is no reason why the same rule should not apply to prison labour.

³⁵ This question was recommended for further study by the First United Nations Congress.

³⁶ The poor general existing conditions have led in the National Penitentiary of Mexico to the creation of a pavilion where prisoners having the necessary financial means rather than prisoners belonging to a certain social stratum may have not only individual cells arranged according to their tastes but also another prisoner as a servant.

³² See, Report already cited *OPEN INSTITUTIONS*. According to the United States Federal Prison Bureau, twenty-five to thirty percent of the country prisons' population could safely be confined and treated with minimum custody facilities, something more than a third could be handled with facilities of medium security and less than a third require the maximum security facilities, characteristic of today's typical State prison. See, *FEDERAL PRISONS, 1952 REPORT*, p. 2.

³³ See Report already mentioned, *PRISON LABOUR*, recommendation VIII.

tions we prefer to advocate the general improvement of the existing systems and regimes. Pending this improvement those belonging to the "professional classes", a term whose boundaries are rather difficult to establish, should as far as possible be given appropriate work.³⁷ With respect to "work-shy" individuals we see no particular reason for making a general exception of all of them and for demanding the creation of a special prison labour programme for them. With the only exception of the mentally ill for whom labour, if any, is part of the treatment, the exceptions indicated and others made by distinguished specialists are an indirect but clear admission of the general poor condition of the existing prison labour programmes.

(iii) The length of the sentences, as far as the organization of prison labour is concerned, raises one of the greatest difficulties. As a general rule over 60 or 70 percent of prisoners remain less than one year in the institutions. This time is too short to give prisoners any vocational or professional training. What kind of work are they supposed to do? There again the existing programmes give an unsatisfactory answer. The solution would be that these prisoners should work as much as possible for private industry either inside or outside open and semi-open institutions. This problem can be solved only if full account is taken of the character of the prisoners, most of whom are first offenders, and of the kind of institutions, which if possible should be exclusively devoted to this kind of offender. Moreover, this problem shows the necessity of finding effective alternatives for short term imprisonment, which is closely related to the prevention of recidivism among first offenders.

Prisoners sentenced to terms of over two years may benefit from good vocational training programmes. Longer periods of stay would allow

³⁷ The term "professional class" is reminiscent of old social privileges which modern criminal law does not admit. Even the fact of being a professional man should not automatically allow any privilege when the profession was deliberately used to commit the criminal offence, or when the nature of it was atrocious. The rules dealing with the classification and individualization of offenders, and those concerning prison labour as adopted by the United Nations Congress do not mention the previous profession of the prisoner. Moreover, rule 6 (1) states that "The following rules should be applied impartially. There shall be no discrimination on grounds of race, colour, sex, language, religion, political or other opinions, national or social origin, property, birth or other status."

them to comply far better with recommendation V of the First United Nations Congress which reads as follows:

"It is desirable to give suitable categories of prisoners vocational examination and to take the results into account when they are assigned to a certain type of work in the institution.

Within the limits compatible with proper vocational selection and with the requirements of prison administration and discipline, the preferences of the prisoner should be taken into account in assigning the work most suitable for him. It should be such as will maintain or increase the prisoner's ability to earn an honest living after release.

It is desirable to ascertain what types of work are most suitable for prisons, with a view to the prisoner's rehabilitation."

(iv) With respect to prison labour, the maintenance of the penal institution raises several questions. One is the question of using the prison labour force for the supply of food to the inmates; another that of employing prisoners in the upkeep of the institution, and a third that of their contributing out of their remuneration to the general maintenance of the institution.

Concerning the first point, it seems there is no difficulty in considering food production as part of the general plan of prison labour. The second point raises more difficulties. Domestic occupations have been, and still are, considered as prison labour and the identification between these two different activities gives the impression that statistically in some prison administrations 70 percent or even more of the prisoners are working. A close examination of this and similar figures shows that they do not refer to constructive prison labour. Domestic work, especially menial work has very seldom the useful nature required for the rehabilitation of prisoners and with very few exceptions is unable to maintain or increase the prisoner's ability to earn an honest living after release. On the other hand, the proper upkeep of the institutions is essential. The only solution seems to be to assign to domestic service the minimum number of prisoners, as far as possible on a rotation basis. A higher step in the vast category of domestic or maintenance services is constituted by the repair of buildings, plumbing, electrical work, carpentry, etc. These and similar activities if properly organized can be considered

as prison labour. The same applies in some countries to the maintenance of power plants, garages, transportation, mechanical laundry and cleaning, etc. Food preparation and servicing may be considered as prison labour. Also clerical, cultural and medical services: storekeeping, filing, nursing, etc. These activities offer opportunities to employ the so-called "professional classes".

All the foregoing forms of work can be effectively organized with only a minimum of prisoners. These should be paid for their work on the basis of the principle: equal work, equal pay.

The third point may take two forms: the penal institution may be made self-supporting by the prison labour of all the prisoners or the prisoners may contribute a part of their salaries for the support of the prison irrespective of the kind of work done. In the first case, only one kind of work (agricultural or other) is usually performed and the output is profitable enough to convince councilmen and other political and administrative authorities that the institution is a success. This is undeniable from the financial or budgetary point of view but is more than doubtful if the social and penitentiary effects are considered. All too often these prison farms or factories sacrifice everything to the budgetary self-supporting aim. In visiting these so-called model institutions we have observed that the rehabilitation of the prisoner was practically totally disregarded and that the fact that a great number of prisoners would return to the towns where they came from was a matter of indifference to the prison authorities only anxious to maintain the self-supporting agricultural output.

In the second case, the cost of food and of other items is deducted from wages. With the present scanty remuneration such deductions seem to be hardly justified, especially if at the same time the prisoner has to help his family, indemnify the victim of the offence and to set aside a part of the wages as savings.³⁸ Only a real economic wage, i.e., the remuneration obtained by the application of the principle of equal work, equal pay would justify prisoners' contributions to food expenses, but not to others such as construction and repair of buildings, staff, programmes, etc. These and similar costs are part of the penal function exercised by the State or Society and therefore should be defrayed by them. The

restrictions imposed upon the prisoner as a result of the juridical situation created by his conviction, impose simultaneously upon the State or Society certain responsibilities, some of them forcibly having financial implications.

VI. CONCLUSIONS

1. *Prison Labour as Part of Labour in General*

This principle is not more than the application to a prison problem of a human right stated by the Universal Declaration of Human Rights. These rights are applicable to penological matters and to prisoners. Consequently, prison labour should be productive and not merely occupational.

2. *The Right of the Prisoner to Work is a Temporarily Restricted Right*

The right of the prisoner to work does not give him any legal claim to obtain a particular kind of work. Other restrictions are imposed by the special juridical status of the prisoner. These restrictions, however, should not affect the precautions laid down to protect the safety and health of prisoners as workers. Like these, they should be protected against accident and participate as much as possible in the existing national social insurance schemes.³⁹

3. *Equal Remuneration for Work of Equal Value*

The restrictions imposed do not, however, imply that the prisoner will receive a lower remuneration. The integration of prison labour in labour in general implies the acceptance of another principle that of equal remuneration for work of equal value, recognized in the Preamble to the Constitution of the International Labour Organization, as amended in 1946. According to the Convention (No. 100) on equal remuneration this principle applies equally to men and women.

4. *Prison Labour is not Part of the Treatment of the Prisoner*

With some exceptions prison labour like free labour is not part of a treatment but something inherent in the organization of prison life. If it is agreed that prison life, as far as possible, should

³⁸ See Rule VII, PRISON LABOUR, of the United Nations Congress already mentioned.

³⁹ See, recommendations on Prison Labour, United Nations Report.

reflect normal life, the prisoners should work. In this respect the wording of rule 71 as approved by the United Nations Congress is very apt. This rule states that all prisoners under sentence should be required to work subject to their physical and mental fitness. The word "required" and the references to adequate fitness convey clearly the idea of a social duty but not that of a legal obligation to work. This social duty embraces the right to work. This right and the right to equal remuneration for work of equal value are in normal life two of the more fundamental elements for the acquisition of self-respect and self-responsibility which in turn are basic in the rehabilitation of prisoners. Consequently, prison labour should not be used as a compensation for time or as a way to shorten the stay in prison. Compensatory labour, redeeming labour, "industrial good time", and other forms barely disguise the failure of the present organization of prison labour and in some cases that of the whole prison system.

5. *No Preference for a Particular System of Organizing Prison Labour*

Provided that the human rights of the prisoner are respected and that his social rehabilitation is facilitated as much as possible none of the existing systems of organizing prison labour is entitled by itself to any particular preference. Private industry should be brought as much as possible into prison labour. In less developed countries, with long-range plans of economic and industrial development it is essential that prison labour be considered as part of labour in general and therefore as part of the national manpower force. In no case should prisoners be considered as a cheap source of labour.

Only the use of a variety of systems can make labour productive and help to rehabilitate prisoners. Labour as a physical occupation, more or less disguised as employment or occupational training, destroys pride and satisfaction which are replaced by monotony, boredom and antagonism. The prisoner who for a long time, sometimes for years, is doing an unskilled or semi-skilled task with little or no relation with the environment in which he will live after his release, fears unemployment and feels insecure. Psychologically, productive work and adequate wages show what he is worth. As has been stated "a man's wage" is not only a reward but also

an endorsement.⁴⁰ If all this is applicable to free workers, it is all the more applicable for psychological reasons to prisoners. Experience shows that the prevailing State-use system cannot prevent the destructive psychological effects of what in many cases is not more than occupational labour.⁴¹

6. *The Organization of Prison Labour is not an Isolated Undertaking*

Like free labour in normal life, prison labour is an aspect of a general pattern. Therefore the organization of prison labour affects and is affected by the general pattern of the prison system. When this is markedly based on the walled prison and on a custodial staff, prison labour cannot fulfil the role assigned to it. In order to fulfil it walled institutions should be reduced to the minimum and open and semi-open institutions used as much as possible. Further, the increasing use of these institutions will reduce the need for the special programmes at present suggested for the rehabilitation or treatment of prisoners, which were to a great extent established because of the inadequacy of the walled prison.

7. *Prison Labour as Part of Labour in General is Less Expensive than Prison Labour as a Second Rate Kind of Labour*

The administration of prison labour as part of labour in general is bound at first to cause some difficulties and will be, during an initial period, more expensive than the present kind of administration. However, these difficulties and costs should not be viewed from a narrow administrative standpoint. Very often otherwise excellent prison administrators are opposed to any change which may alter the foundations, features and routine of what they considered a well established system.

⁴⁰ See *Medical and Psychological Aspects of Modern Industry*, by DR. CLAUDE VEIL, in *INTERNATIONAL LABOUR REVIEW* LXXV, 1, 1957, pp. 1-20.

⁴¹ This deteriorating effect contrasts with the proud references made in official prison reports to group therapy and other treatment programmes. The question arises about their usefulness when the administrations are unable to offer productive labour all the year round. The same applies to educational programmes. What was said some years ago by F. T. FLYNN still is true: "a prison educational programme is neither a panacea that will 'cure' criminals nor a realistic substitute for all idle prisoners". See *The Federal Government and the Prison Labour Problem in the States*, in *THE SOCIAL SERVICE REVIEW*, XXIV—1 and 2, 1950, I, 37.

With respect to prison labour the prevailing systems are not cheap at all. Although owing to occasional profits—based on the existing low remuneration—they appear as such, the question arises whether what appears economical from a budgetary point of view is not in fact very costly from the social point of view of the rehabilitation of prisoners. The maintenance of the existing system of prison labour forcibly implies not only the lowest remuneration for human work but also, as a general rule, poor-quality work, low professional training, long periods of forced idleness more or less disguised, and finally the inability of the prisoner to help his family—more often than not on relief—and to help himself upon release with his savings, if any. The conclusion would be that at present in spite of the sporadic success of some vocational programmes, the well known slogan of the rehabilitation of prisoners by work and for work is in some cases not more than an empty phrase.⁴²

There is the probability that in spite of what is very often said the existing systems are very expensive to the tax payer if account is taken of: (a) the relief given to prisoners and their families by social services; (b) the various expenses incurred by prison administrations in order to alleviate the poor financial condition of prisoners upon release; (c) the costs of after-care associations or institutions. In all probability the consideration of prison labour as part of free labour, and therefore the application of the principle of equal remuneration, would not cost more than all the combined expenses at present involved in the above-mentioned kinds of help. It seems reasonable to conclude that the financial burden at present imposed upon social and after-care services, and the cost of their organization, would be considerably alleviated by the application of the principle of equal remuneration.

It should be added that, as stated, the organization of prison labour on the lines proposed would imply also the reduction of special training and vocational programmes. Although needed for certain groups of prisoners, these programmes are inconsistent with the present status of prison labour; actually, in some cases they are attempts to patch up a generally unsatisfactory state of affairs. Further, the organization of prison labour as part of labour in general would make unneces-

⁴² In order to help themselves and their families, the practice of selling their blood every three months has already developed among convicts.

sary many of the existing psychological and psychiatric services. If the existing systems of organizing prison labour with their inherent shortcomings, such as low remuneration, low professional qualifications and enforced idleness, were done away with, the need for such services would be greatly reduced.

The Organization of Prison Labour Not Only a Penitentiary Matter

The organization of prison labour as part of free labour must be carried out with the co-operation of a variety of agencies among which trade unions and employers associations must play a definite and responsible role. At the present social juncture, it would be erroneous to believe that the role of these unions or associations is merely that of protecting the individual or collective interests of their members. Although historically this was their purpose, nowadays their role and responsibilities extend beyond such narrow aims.

VII. FINAL REMARKS

The effective co-operation of the governmental agencies concerned is essential. So is that of the community. People should know that with the possible exception of forced labour, prison labour is the lowest form of human labour and that the rehabilitation of prisoners by work and for work cannot be obtained in the majority of cases as long as prison labour is what it is at present.

In organizing the work of prisoners as part of free labour it is understood that organization means also that of the work of ex-prisoners. In spite of some timid progress this employment remains one of the most vexing problems in the rehabilitation of prisoners. The solution of the problem would be greatly facilitated if prison labour were part of labour in general. This would mean that the status of prisoners or of ex-prisoners did not deprive any person of his right to work.

In short, the present organization of prison labour is socially as well as economically far more harmful and expensive than official reports lead one to believe.⁴³ It is in fact the greatest stumbling

⁴³ What the taxpayers really want is effective protection. This cannot be offered unless the prisons systems are re-organized, including the re-organization of prison labour. It should be remembered that the rehabilitation of prisoners is part of the administration of justice. By its own character and aim this function can hardly be considered as an inexpensive one and even less as an economically self-supporting institution.

block of modern penology. It is wrong to think that modern penology means the advocacy of more or less advanced or original programmes or the "discovery" of forms of treatment, all of them implying that prisoners are something so different that they constitute, as people, a group apart. Actually, prisoners are like anybody else and any person however righteous he is can become a delinquent and a prisoner at any moment. If, with some exceptions, work is an important part of the general pattern of life there is no reason why the same should not apply to prison life. In both cases what is needed is a dignified kind of work. This is one of the most important objectives of modern penology which aims not at the multiplication of programmes or treatment but at considering prisoners as far as possible like human beings and in this particular case as workers.

In the writer's opinion there is no doubt that the integration of prison labour into free labour is essential for the rehabilitation of prisoners and that it can be achieved. Here again a distinction should be made. In the so-called highly-developed countries the difficulties involved will be greater than elsewhere, for in these countries the existing administrative machinery and political pattern represent a tradition, a routine and a variety of vested interests which will oppose the integration. Unless a serious effort is made in these countries, it is probable that they will persevere with the present vicious circle whereby prison labour remains as something apart and, simultaneously to offset the defects of such labour, special programmes or forms of treatment are tried out with very poor rehabilitation results. This is particularly noticeable in those countries whose prison administrations are "maximum security" minded.

For the so-called less-developed countries the situation looks more promising as long as they do not imitate the so-called highly developed, or as long as these do not introduce their ideas and systems by various means into the less developed countries. More often than not transplantation of penitentiary systems or methods means transplantation of a determining factor of crime.⁴⁴

To begin with, in the less-developed countries, there is a re-construction or planned programme

which should facilitate the integration of prison labour into free labour. This integration must of course in no case mean the use of prisoners as a cheap labour force. Prisoners must be employed as workers like anybody else. This will undoubtedly mean that some public works will cost more than originally expected. On the other hand expenditure on social assistance to prisoners and their families, after-care services to released prisoners, and special training programmes in the prison expenses will be considerably reduced.

Secondly, in the so-called less developed countries the administrative machinery is less reluctant to accept innovations which in more developed countries would be greatly resisted. This attitude is partly a result of the general trend for the reconstruction or development of the country.

Thirdly, in the less-developed countries trade unions or employers' associations may not exist and if they do they do not offer the resistance that similar organizations present in the more developed countries. There is a better chance that if properly organized or approached these organizations, especially in the new countries, will perform a social role which their opposite numbers in other countries, especially in highly industrialized ones, are hardly able to accomplish.

Fourthly, as far as penitentiary matters are concerned, although in the less-developed countries prison administration is still in its infancy, there is among the new countries a healthy awareness that the open and semi-open institution should replace the walled prison as much as possible. Steps in this direction have already been taken and although some of the new institutions are still below the requirements assigned by modern penology to open and semi-open institutions there is every reason to expect that in the near future these requirements will be attained.⁴⁵

It is the writer's opinion that the new penology, or rather the future penology, will not consist in the multiplication of special programmes or services or in treating prisoners like sick persons. Fundamentally, it will consist in treating them,

⁴⁵ In this, and other aspects there is a clear distinction between the attitude and efforts of those concerned with penitentiary problems in Asian and Latin American countries. Both are "under-developed" but in many different ways. In the new Asian countries there is, in spite of very serious difficulties, a definite healthy trend toward the improvement of prison systems, a marked social understanding of penitentiary and prisoners problems which has no matching parallel in the Latin American countries.

⁴⁴ This question is closely related to the general one of determining to what extent the defective organization of prison labour is a contributing element to crime and delinquency.

as far as possible, like any other person. Prison life necessarily involves limitations but these should in no case deprive prisoners of their fundamental rights as human beings. Therefore if penology wants to achieve the rehabilitation of prisoners with less expense and less theoretical assumptions, the assimilation of prison labour

with free labour is one of the first steps in the right direction. After all if rehabilitation means integration into normal life, it seems simple common sense to conclude that the assimilation of prison labour with free labour is a normal and necessary step for the final integration of ex-prisoners into normal life.