

OUR PENAL MACHINERY
AND ITS
VICTIMS

JOHN P. ALTGELD

Our Penal Machinery

AND

ITS VICTIMS.

BY

JOHN P. ALTGELD.

NEW AND REVISED EDITION.

CHICAGO:

A. C. McCLURG & COMPANY.

1886.

PREFACE TO FIRST EDITION.

My sole object in writing the following has been to call attention briefly to the character of our penal machinery and if possible lead others to examine it; feeling confident that, when once generally understood, improvements will be made therein which will benefit society and will greatly lessen the sum of human misery. J. P. A.

CHICAGO, August, 1884.

PREFACE TO SECOND EDITION.

The very flattering reception given the first edition has led me to believe that some good might be done by giving this work a wider circulation. I have therefore concluded to bring out a new edition. J. P. A.

CHICAGO, April, 1886.

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PART SECOND.

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OUR PENAL MACHINERY AND ITS VICTIMS.

PART FIRST.

CHAPTER I.

ARRESTS — NUMBER IN JAILS — NUMBER IN PENITENTIARIES — DEPENDENTS AFFECTED.

According to the Report of the Superintendent of Police of the city of Chicago for the year 1882, there were 32,800 arrests made by the police of this city during that year, being equal to about five per cent. of the population.¹ This does not include the arrests made by constables and other state officers, nor those made by the local police in the adjoining suburbs of Chicago; neither does it include the arrests made by the federal officers.

Just how many of the above were actually incarcerated in prison it is difficult to estimate; but it is safe to say that the majority were actually locked up, even though some of them were bailed out soon after. Supposing that fifty per cent. of the above, which, as will be seen, is nearly right, were what are called "repeaters"—that is, persons who had been arrested before,—it would still leave the number of new

¹ The number of arrests by the police of Chicago for the year 1884 was 39,433, of whom 30,887 were males and 8,547 were females; and the general condition of these, as well as the proportion of each class, as it regards age, prior arrests, occupation, etc., was substantially the same as that of those arrested in 1882.

arrests, that is, the number of persons arrested for the first time, at 16,400. Then, assuming that the population will remain the same, and multiplying this number by 33, the number of years of the average lifetime, we find the astounding aggregate of 541,200 persons arrested during each generation by the police of Chicago alone.

The number of arrests in proportion to the population is not greater in Chicago than in the other large cities of America; in fact, it falls far below that of some. It is true that many of the above did not actually live in Chicago, and it is also true that the number arrested in proportion to population in small towns and in the country is much smaller than in large cities. Now, while we have no means of ascertaining the exact number of arrests made throughout the entire country each year, still if we add the arrests made by constables, sheriffs, and other officials, state and federal, it will be found that the above estimate of five per cent. will, when applied to the whole country, be not far out of the way. Assuming, then, that we have, in the United States, 50,000,000 population, it follows that there are in the neighborhood of 2,500,000 arrests every year (some writers estimate the number much higher); and, assuming further that forty per cent. of these were repeaters (this is sufficiently large when the whole country is included, for outside of cities their number is much smaller), it will still leave 1,500,000 as the number of persons arrested for the first time each year. That is, one million and a half of human beings are annually broken into what may be called a criminal experience.

If an average life-time is 33 years, and the population should not increase, there will be, according to the above,

in each generation, about 49,500,000 different human beings in this country arrested and subjected to a criminal experience.

Number in Jails.

So much for arrests. It is impossible to tell how many persons are actually incarcerated in the police prisons, variously called station-houses, calaboses, etc.; but aside from these, there is a jail in nearly every county in the United States, making about 2,140 in all. At the time of taking the census of 1880, there were actually confined in these jails 12,815 prisoners. The average length of confinement in jails is generally from 30 to 40 days; so that, if the number of inmates is to remain the same, the above number must be renewed a little over ten times every year. This would make the total number of committals to the county jails in that year, 128,150. Allowing for increase of population, it would make 160,150 as the annual number now—(1883-4).

Deducting from the above forty per cent. for repeaters, it leaves 96,090 as the number of persons who are annually put in jail for the first time.

Number in Penitentiaries or State Prisons.

In addition to the above, there are upward of fifty state prisons and work-houses, generally called houses of correction, in the United States, where those actually convicted are confined, and in which the prisoners are required to work, as the convict labor system has been introduced and now prevails in all of the state prisons and houses of correction in the United States, except in Delaware. In the latter state the prisoners do not work.

It should be explained that the so-called houses of correction, or Bridewells, are in fact miniature penitentiaries; the chief difference being that in the former those who are convicted of the minor offenses and sentenced for a short term, as well as those who are unable to pay a fine imposed by some police magistrate, are committed. These houses are generally situated near large cities, and frequently draw inmates from no other source.

According to the Report of the Bureau of Labor Statistics of Illinois, made to the legislature of that state, there were, in 1880, confined in the various penitentiaries and houses of correction in the United States, in which prison labor was performed, about 50,000 convicts. The average length of confinement in the penitentiaries varies greatly from time to time, but is generally from two and one-half to nearly four years, while in the houses of correction it is generally from thirty to forty days. As we do not know the precise average length of confinement in state prisons, we can not tell exactly how many enter these institutions every year for the first time.

Allowance must here also be made for repeaters, who, in some state prisons, make up twenty-five per cent. of the inmates. But, after making all allowance, it is apparent that the number of men—and the great majority are young men—who are annually added to the miserable throng, is very large; and if we multiply this number by the number of years constituting the average life-time, we can form some idea of the number of victims each generation contributes to this altar.

Dependents Affected.

Pursuing the subject a little farther, we find we have only touched a small part of it. I will not here discuss the moral effect of arrest, imprisonment, etc., on the prisoner himself, but simply on those standing in close relationship to him, as father, mother, sister, brother, child, etc. The disgrace, the odium, the pain, reaches out remorselessly to those, and to a greater or less extent they suffer on account of his fate. It is safe to say there are at least five persons, on an average, who stand in this relation to every man who is wearing striped clothing and responding to a number in a state prison—to every one who is breathing the corroding air of the county jail, as well as to him who, for the first time, feels the ignominy of having rough hands laid on him and being deprived of his liberty.

Multiply, now, the foregoing numbers by five, and then behold the multitude who are directly affected—who feel the shock, the quiver of every blow that is struck by our penal machinery.

Consider for a moment that for the 50,000 beings confined in the penitentiaries, there at least 250,000 others who are suffering. Leave out the repeaters, if you like, as being past the pale of sympathy; take the annual 96,090 new cases of imprisonment in the county jails, and reflect that there are 480,450 others who are feeling the blow. Then take the 1,500,000 persons arrested for the first time each year, and remember that there are annually 7,500,000 different human beings, and these of the poorer and weaker classes, who are shoved downward instead of helped by our penal machinery.

CHAPTER II.

NUMBER OF MEN EMPLOYED—COST—RESULTS.

Again, look at the number of men employed by this system. There are the thousands of regular policemen in our cities—the thousands of special policemen—the thousands of so-called *detectives*, both public and private. Then there are in the neighborhood of 50,000 constables in this country, and about as many magistrates. Then there are nearly 2,200 sheriffs, and perhaps 10,000 deputy sheriffs. Then come grand juries—for most of the states still retain this system—meeting, on an average, three times a year, and composed usually of 18 men each; then the petit juries for about 2,200 counties, meeting as often as the grand juries, and, including talesmen, composed of about the same number of men; then, lawyers for the state; next, judges for the trial, and appellate courts, clerks for these courts, keepers for police stations, keepers for about 2,200 jails, keepers for all of the penitentiaries, to say nothing about witnesses for the state and defense. In all these you behold a vast multitude of men, numbering nearly a million, all forming a part of this machinery, many giving it all their time, some getting salaries and others relying on the fees they can collect from those arrested—actually getting their living, or trying to get it, out of the shortcomings and transgressions of their fellow-men.

So much for a glance at the size of this machinery.

Cost.

Turning for a moment from the size to the “cost of the thing,” we find that the sums expended are more than any man can count. It is impossible to estimate the amount now actually invested in prison buildings and equipments throughout the land. There are nearly fifty large penitentiaries supplied with work-shops, machinery, etc. Then there are nearly 2,200 jails, besides numerous police prisons. Perhaps \$400,000,000 would be a low estimate of the cost of all these improvements. This is all dead capital. Nobody thinks of getting any return on it—even in those prisons that are said to be self-supporting; nobody thinks of paying interest on the investment. Placed at five per cent., the interest on this sum alone would be \$20,000,000 per annum.

The above sinks into insignificance when compared with the yearly expenses. While a few of the penitentiaries have, for short intervals, been “self-supporting,” the most of them have to apply annually to the legislature for large appropriations. Then the expense of keeping up the jails and smaller prisons and the police force, may be called a dead loss.

In 1880, the average cost in Illinois of every prisoner in jail, including expense of arrest, etc., was about \$27. Assuming this to be a fair average, it would make \$4,087,800 as the total expense for jail prisoners for a year, on the present basis of population.

For the year 1882, the expense of the police department of Chicago was a little over \$800,000, making an average of about \$24 for each of the 32,800 arrests. As the police department of Chicago is run as economically and the force is as effective and well managed as any in the land, this is a low average; and yet if this sum is multiplied by the total

arrests throughout the land, it would make \$36,000,000 annually as the amount paid by the government for arrests simply, to which most of the jail expenses—the costs of prosecution and of confinement in the larger prisons—must yet be added.

These sums are large; and yet they represent only a part of the expense. They approximate only the amounts paid directly in the shape of taxes; they do not include the large sums paid as costs by those convicted, nor do they include the large sums expended in various other ways in connection with our criminal procedure.

Results.

Such is the size and cost which a mere glance at our penal machinery reveals. *It is immense, it is costly, and its victims are counted by millions.* Surely, one would suppose that in this country crime was repressed, that life and property were protected; and as the terrors of the law are scattered so profusely in the shape of numerous arrests, one would suppose that the hardened criminal was perfectly restrained, and the young were deterred from the paths of crime.

But, strange to say, quite the opposite seems to be the case. The young are not deterred, nor are the vicious repressed. Revolting crimes are of most frequent occurrence in all parts of the land, and the feeling is spreading that somehow or other our penal system does not protect society. In short, it does not seem to be a success.

It does not deter the young offender, and it seems not to reform nor restrain the old offender.

This being so, one is naturally led to ask whether there is not something wrong with the system; whether it is not

based on a mistaken principle; whether it is not a great mill which, somehow or other, supplies its own grist, a maelstrom which draws from the outside and then keeps its victims moving in a circle until swallowed in the vortex.

For it seems, first, to make criminals out of many who are not naturally so; and, second, to render it difficult for those once convicted ever to be anything else than criminals; and, third, to fail to repress those who do not want to be anything but criminals.

CHAPTER III.

CRIME-PRODUCING CONDITIONS.

WHO ARE THOSE ARRESTED—OCCUPATIONS OF MALES—
OCCUPATIONS OF FEMALES—AGE—PARENTAGE—HOME
INFLUENCES—SCHOOL PRIVILEGES—HABITS, ETC.

Let us first see whence comes this multitude—from what strata of society it is drawn. Is it composed of the strong, the well raised, well trained, well housed, and well fed class, and must it therefore be regarded as willfully criminal? or is it largely made up of the poor, the unfortunate, the squalid, and those who are the victims of their environment? We need not go far for an answer. Taking the Report of the Superintendent of the House of Correction (Bridewell) of Chicago, we find that of 7,566 persons imprisoned in that institution during the year 1882, all but 190 were incarcerated for non-payment of fines. That is, 7,376 had been fined for some small offense, and, being unable to pay the fine, had been sent to the House of Correction to work it out. This shows that nearly all of those there confined were of the very poor classes.

Occupations of Males.

Glancing at the reports of their occupations, we find that 306 reported no occupations, 1,460 claimed to be common laborers, 214 sailors, 327 teamsters, 190 hostlers, 167 railroad employes, 96 waiters, 99 printers, 64 peddlers, 176 painters and glaziers, 111 shoemakers, 99 puddlers, 110 cooks, 77 fire-

men, 109 packers, 64 machinists, 80 apprentices, 87 barbers, 61 blacksmiths, 150 carpenters, 149 butchers, 43 chair makers, 44 cigar makers, 157 clerks, 48 brick-layers, 36 bar-tenders, 65 boot-blacks, 23 boiler-makers, 59 farm hands, 82 molders.

Occupations of Females.

Of the 1,809 females committed to the same institution during the year mentioned, 359 were reported prostitutes, 871 servants, 121 washwomen, 52 seamstresses, 26 scrubbers, 99 cooks, 24 dress-makers, 114 launders, etc., showing that the women likewise were of the poorer classes, almost one-half being servants.

Age.

Looking at their ages, we find they ran as follows: eight years old, 1; nine years old, 5; ten years, 14; eleven years, 25; twelve years, 47; thirteen years, 68; fourteen years, 103; fifteen years, 95; sixteen years, 150; seventeen years 185; eighteen years, 285; nineteen years, 231; twenty years, 234; twenty-one years, 310; twenty-two to twenty-five years, 1,184; twenty-six to thirty years, 1,343; thirty-one to thirty-five years, 960; thirty-six to forty years, 978; forty-one to fifty years, 921; fifty-one to sixty years, 358; sixty-one to seventy years, 74; seventy-one to eighty years, 16; eighty-one to ninety years, 9. Showing that 508 were under sixteen years of age; 1,413 were under twenty-one; 2,907 were under twenty-six, and 4,241 were under thirty years of age.

Parentage.

Again, it appears from the same report that of the 7,566 incarcerated during said year, 3,460, or almost half, had no parents living; 1,105 had mother only living; 529 had father

only living,—making 5,094, or five-sevenths of all, whose home conditions were bad, and almost half of the whole number committed had no home at all.

The same conditions are found in the larger prisons, as will be seen by examining the following table prepared by Fred. L. Thompson, chaplain of the Southern Illinois Penitentiary at Chester. It throws a flood of light on this subject.

TABLE SHOWING PRIME CAUSES OF CRIME, ON A BASIS OF FIVE HUNDRED MEN.

Home Influences.

Lost father at 5 years and under	65
“ “ 10 “ “ over 5	20
“ “ 15 “ “ over 10	7
Lost mother at 5 years and under	42
“ “ 10 “ “ over 5	29
“ “ 15 “ “ over 10	28
Lost both parents at 5 years and under	24
“ “ “ 10 “ “ over 5	28
Never knew a home	38
Left home at 10 years and under	49
“ “ 15 “ “ over 10	167
“ “ 18 “ “ “ 15	165
“ “ 20 “ “ “ 18	47
“ “ 21 “ “ upward	34
Without home influence at 18 years and under	419

School Privileges.

Never went to school	218
Went to school 2 years and less	104

Went to school 5 years and over 2	99
“ “ 10 “ “ “ 5	79
Illiterate	153
Read and write very imperfectly	189
“ “ “ with higher attainments	188
Learned to read and write in prison	32

Habits.

Frequented saloons	406
Drunken habits	121
Drunk at time crime was committed	115
Gambled	246
Carried concealed weapons	208

Age at First Penitentiary Crime.

20 years and under	150
25 “ “ over 20	140
30 “ “ “ 25	90
40 “ “ “ 30	70
50 “ “ “ 40	24
60 “ “ “ 50	21
70 “ “ “ 60	5

In his report accompanying this table, Mr. Thompson says: “I have read every available thing on crime, its cause and cure; on prisons, their discipline, etc. I have talked freely with the convicts as to their early lives, their home influences, their early opportunities and their habits; and I have come to the conclusion that there are two prime causes of crime—the want of proper home influence in childhood, and the lack of thorough, well-disciplined education in early life. Of the first, there are at least five classes: Those who never

knew a home; those who lost parents, one or both, while young; those who had vicious homes; those who ran away from home in the formative period of life; and those who were over-indulged in their homes. Of the second, there are those who never went to school; those who went but very little; and those who played truant, or were idle and refractory in school. The lack of this early influence and training at home, and of this discipline and learning at school, has left the individuals morally and mentally weak, the easy subjects of bad habits, vicious appetites, and designing men.

"These drift into the tide of bad associations, trashy and then vicious reading, to places of carnal amusements, to saloons, gaming houses, houses of ill-fame, to the society of the vulgar and criminal, to the committing of crimes—small at first, but bolder at last—and then into the penitentiary. The current of this stream is as traceable, and its sweep as powerful and merciless, as the channel of the Mississippi river. As the latter, unmolested, sweeps its drift into the Gulf of Mexico, so certainly the former sweeps its drift into the penitentiary or some other form of penal service, unless the strong arm of society is in some way put forth to the rescue. That you and others may see and feel this as I do, I have visited five hundred prisoners, taken in succession, and put to them uniform questions, the answers to which I have carefully noted, tabulated, and present with this report. When you have studied this table, I am certain you will be convinced of the position I have taken as to the prime causes of crime. No one has a better opportunity to see the discipline of the prison, and study its effects upon the convicts, than the Chaplain."

Looking a moment at Mr. Thompson's table, we see that *of the 500 convicts examined, 419, or upwards of four-fifths, were without home influence at 18 years and under.* This shows where the multitude comes from.

It also appears that *of the same five hundred, 218 never had attended school at all; and that only 188, or less than two-fifths, had what is usually called a good, fair education.* It also appears that more than half were under twenty-six years of age.

This showing is not exceptional to that penitentiary; on the contrary, these conditions are substantially the same in all of the large prisons in the country. I have examined the reports of nearly all the large prisons in the United States, and find a remarkable similarity in all of them, in so far as they treat of the question here under consideration.

The truth is, that the great multitudes annually arrested for the first time are of the poor, the unfortunate, the young and neglected; of those who are weak, and, to a great extent, are the victims of unfavorable environments. In short, *our penal machinery seems to recruit its victims from among those who are fighting an unequal fight in the struggle for existence.*

The subject of *crime-producing conditions* has received but little attention in the past, and is only now beginning to be discussed. It has always been assumed, in our treatment of offenders, that all had the strength, regardless of prior training and surroundings, to go out into the world and do absolutely right if they only wanted to, and that if any one did wrong it was because he chose to depart from good and do evil. Only recently have we begun to recognize the fact that

every man is to a great extent what his heredity and early environment have made him, and that the law of cause and effect applies here as well as in nature.

CAN'T SAY "NO."

Nor have we thus far sufficiently considered the fact that a large proportion of the human family can not say "no" at all times when they should. How common it is for people of education and character to do things which they feel at the time are injurious. Yet an influence which somehow they can not resist impels them, and they act, as it were, under protest, — often doing things which at the very time fill them with dread.

This is true of many who had excellent training, while among the less fortunate there are multitudes, with fair intelligence and industry, who want to do right, but who suddenly find themselves within the power of an evil influence, exerted by pretended friends, which they dread,—which drags them down, often leads them, against their will, into crime, and from which, unaided, they can not free themselves. They are morally weak, not naturally bad. They are tools, not masters,—mere instruments, not principals, and, so far as it concerns moral responsibility, might as well be inanimate and unconscious. Yet we treat them as if they were masters.

CHAPTER IV.

REPEATERS.

In the Milwaukee House of Correction there were committed, during the year ending December 31, 1881, 1,420 prisoners; of these, 58.52 per cent. were committed for the first time, while 41.48 per cent., or less than half, had been imprisoned before.

During the year 1882, there were committed in the Chicago House of Correction, or Bridewell, 7,566 prisoners; of these, 3,923, or a little over half, admitted that they had been imprisoned before.

These two institutions may be taken as showing the average of re-committals in similar institutions throughout the country, which may be set down as 50 per cent.; that is, one-half of all imprisoned admit having been in prison before.

But it must be remembered that all those imprisoned because of inability to pay a fine imposed by some police magistrate, as well as those convicted of the smaller offenses only, are sent to these institutions; hence the average of re-committals is much higher than in the other prisons.

For example, in the Illinois Penitentiary, at Joliet, there were committed, during the year ending September 30, 1882, 747 convicts. Of these, 121, or 16.20 per cent., admitted that they had been imprisoned in the penitentiary before. In some years the average is higher. It varies a little in all of the penitentiaries, but in many it is 25 per cent.; and if we

include the Southern States, where negroes are frequently re-committed for rather trivial offenses, it will average 30 per cent. No doubt a great many are re-committed without the knowledge of the prison officers, and consequently the number of re-committals really exceeds the above estimate.

Of the 121 above mentioned, 88 were committed for a second term, 29 for a third, 5 for a fourth, 3 for a fifth, and 1 for a sixth.

No doubt the average above given, of 50 per cent. in houses of correction, and 30 per cent. for penitentiaries, would be much higher still, if it were not for the fact that the average life-time of the chronic criminal is short; exposure and misery carry him to an early grave.

But this average is much higher than it should be. The idea that one-half of the several millions annually arrested must go on and become chronic criminals, has something appalling about it. And when we consider that it is from this throng that the majority of the desperate and vicious criminals come, the question again suggests itself whether there is not something the matter with the system; whether the system is not responsible for a part of this result; whether, in fact, the system we now have, instead of being reformatory and preventive, is not in reality debasing and productive.

Having taken a general survey of its size, cost, and results, and having seen who are its victims, let us consider its operations a little further, especially in so far as the effect on the young, on the innocent, and on the first offenders is concerned. And for this purpose it is important that we have at least some general ideas as to the character of the average police prisons or lock-ups.

CHAPTER V.

LOCK-UPS.

Wines, in his great work on prisons, says of them :

“ There is another class of prisons, little known or thought of, but very numerous and often extremely crowded, namely, the city prisons—station houses, or lock-ups, as they are variously called. They almost need a John Howard for their sole reformation. * * * It would seem at first thought to be a matter of slight importance where arrested persons are put for a single night or day, or how treated, or under what circumstances of discomfort kept. It is urged, ‘ Make the place intolerable and they will keep out of it ! ’ If they would, the case would be different, and there would be less to say. If crime were more effectually prevented by cruel treatment of the criminal, that would be some excuse for it. But all experience proves the contrary. *Brutal treatment brutalizes the wrong-doer and prepares him for worse offenses.* * * * In studying what character to give to a lock-up, we must consider that among the occupants there will always be a number who are there for the first time and the first offense. They have been caught in bad company, or been guilty of some disorder, or found sleeping out of doors, having no in-doors where to sleep; or accused by the blunder of a policeman, or held on groundless suspicion.

“ Just at that point not a few of these take their first step

in a downward course. Probably not less than ten per cent. of all confined nightly in this class of prisons are there for the first and trifling offense, or for no punishable offense at all; and the aggregate number every night shut up in them throughout the entire country can hardly be less than from ten to fifteen thousand. Think of it! Not less than a thousand every night in the year locked up for the first time for a small offense, or for no offense. Not a few of them children — boys and girls under fifteen years of age, whose chief fault is that they have never known a parent's love, never enjoyed the blessings of a home, never felt the warm presence of Christian care and kindness. Truly, human justice is a clumsy machine, and often deserves the punishment which it inflicts."

Dr. Eliot, of St. Louis, contributed, in 1876, a paper to the New York *Prison Congress*, in which he describes one of these lock-ups in St. Louis, in which each cell is twelve feet long by eight feet wide and ten feet high, with no windows and no ventilation, all the light and air being admitted through grated doors opening into a passage. The usual nightly average of occupants to each cell is four or five, on Sunday nights often going up to eight or ten. Dr. Eliot says :

"What school-houses of crime are these! The city's public schools of vice and profligacy, open for men, women, and children, every day in the year, with a double accumulated crowd for the Lord's day! Go through the lock-ups of any large city on Sunday night, and you will see where no small part of the primary instruction in crime — yes, and advanced instruction, too — is given, and who the learners are."

I can not add anything to the above, and if any one doubts the correctness of the picture, I simply say to him : Go and see for yourself, and be convinced ; and bear in mind that the above condition is not an exception, for these stations, or lock-ups, are very much alike all over the country. (See *Jails and Remedy*.)

CHAPTER VI.

COUNTY JAILS.

Mr. Chas. E. Felton, the Superintendent of the Chicago House of Correction, who has had a wide experience in prison management, has written the following concerning County Jails :

"If there is a school for teaching vice and crime, it is the ordinary county jail, in which prisoners are herded in cells, and are allowed to congregate in the halls, without the least discrimination being made as to cause of detention, habits of life, physical condition, or previous moral character. This fact as to jails comes from what would be called heredity, if applied to the peculiarities in human character; but as touching jail construction and management, it would be as a resultant of common habit. From the earliest days down to the present time, jails have been constructed without a seeming thought being given to any other end than that of safety from escape of their inmates; and in their management, with few exceptions, there seems to have been but one additional thought, and that was, 'How can the most money be made through the care of their inmates?' Now that is about the status of the jail question to-day. That our jails are nurseries of vice and crime is a recognized fact,—one which jail officials seldom, if ever, deny; and in writing thus of them, it is not the intention to point toward any one in particular of the more than twenty-five hundred in this country; nor to exclude but few as being different from the others."

That eminent authority upon prison and reformatory work, Rev. Fred H. Wines, lately said of the jail system :

"It is a system of the association of the clean with the unclean; of the old and the young; of the innocent and the guilty; and, in some jails, of men and women, because men and women are not separated in some jails. In a jail in this state, I have known men and women to have the liberty of the entire jail, without any interference on the part of the jailers. I suppose they were locked up at night; but they were together all the day. Then, again, the jail is a place of absolute idleness. No work is provided for the inmates. In the third place, it is a system in which the state ignores its own responsibility, and throws the men for whom it is responsible into the hands of incompetent county boards. If there is an iniquity in this land to-day, it is the county jail system. I do not know of any greater iniquity perpetrated to-day in the world, than the jail system of the United States. It originated in the primitive days of society; and there is no reason for its continuance, except that the people have not awakened to its enormity. There is no reason for it in law, morals, or public policy; there is no reason for it, unless, as I have heard suggested, it is kept up, as it is in some cases, I suppose, by the sheriffs, who receive fees for looking after the prisoners, and get an allowance for dieting them, and they are not willing to give up their perquisites."

So much for their character. *As to the remedy:*

The most experienced managers and reformers now agree that none should be confined in county jails except prisoners awaiting trial and who are charged with offenses of so grave a character as to require confinement before conviction. And these should not be permitted to congregate together,

but be kept in separate cells—well lighted, but so arranged that one prisoner can not see any other—so that those who may be discharged can not contract any contamination while in jail, the prisoner being permitted to converse only with the keeper and such visitors as may be admitted.

I am informed by Gen. Brinkerhoff, of Mansfield, Ohio, that several jails have been built and are being managed on this plan in that state, and the result is found to be so satisfactory, both to keepers and to the better class of prisoners, that the general adoption of the system is most earnestly advocated by all who are familiar with its workings.

I will add that all that can be said in favor of such a plan for a county jail, applies with greater force to lock-ups.

CHAPTER VII.

EFFECTS OF IMPRISONMENT — ARRESTS A MATTER OF PRIDE — PRISON PRINCIPLES — ALL TREATED ALIKE — NO GOOD RESULTS.

What effect does arrest and imprisonment have on those arrested, more particularly on the young?

Considering the great number annually arrested and imprisoned, the facts that the great majority of all these are under twenty-six years of age, that a very large proportion of them are under twenty years of age, and that in some instances one-fifth of them are females; and, still further, the fact that almost all of them are of the poor—of the class that needs encouragement more than almost anything else,—this is a most important question, especially as our present system of treating offenders does not seem to be a success. However great an improvement it may be on the past (and nobody disputes that it is) still it is not a success.

Turning now again to the Report of the Chief of Police of Chicago, we find that of the 32,800 arrested, 10,743 were discharged by the police magistrates, to say nothing of those that were bound over to the grand jury and then discharged. So that during the one year there were in that one city upwards of 10,000 young persons given a regular criminal experience without having committed any crime. Think of this a moment. And if so many in one city, what a multitude must

there be throughout the land! Mind, these were not even offenders. But what was the treatment they received? Why, precisely the same as if they had been criminals. They were arrested, some of them clubbed, some of them handcuffed, marched through the streets in charge of officers, treated gruffly, jostled around. At the police station the name and a complete description of the person of each was written on the prison records, there to remain. Some of them were bailed out, while the remainder were shoved into cells and forced to spend a night and sometimes a week there, forced to stand around with criminals, before they were discharged. Now, what effect will this treatment have on them? Will not every one of them feel the indignity to which he or she was subjected, while life lasts? Will they not abhor the men who perpetrated what is felt to be an outrage? Will they not look on this whole machinery as their enemy, and take a secret delight in seeing it thwarted? Will they not almost unconsciously sympathize with those who defy this whole system, and are they not thus suddenly brought a whole length nearer crime than they were before? And will not those who were already weak, and having a hard struggle for existence, be farther weakened, and therefore more liable soon to become actual offenders than they otherwise would have been? Remember, *brutal treatment brutalizes* and thus prepares for crime.

Arrests a Matter of Pride.

At present, to make numerous arrests is a matter of pride with many policemen. In fact, in many places their efficiency, their standing as peace officers, actually depends on and is determined by the *number of arrests* they make. And

the chiefs of police in many villages, in preparing their reports, take great pride in being able to report a large number of arrests. There often exists even a rivalry between different policemen on the same squad in this respect, each being anxious to get the credit of "running in" some poor wretch. I recently heard a policeman boast of his magnanimity towards a brother officer by letting the brother officer make four different arrests and thus get his standing improved, when the speaker could just as well have made them himself.

Now this is wrong. It begets the wrong kind of efficiency. It encourages unnecessary arrests.

In the enforcement of the law, every unnecessary indignity inflicted, whether by word or act, especially in the case of first offenders, only makes matters worse. The person having to submit to it is thereby made the enemy of the officers and of the law.

In reality, the police and other officers of the law should be protectors and friends of the poor and the weak, and these should naturally fly to the former like a child to a parent for assistance and protection. But almost the opposite of this is too often the case. It is the poor and the weak who are afraid of the officers, and avoid them whenever possible. This is not as it should be. The trouble is that too many officers (there are noble exceptions) like to assert their authority when there is no necessity for doing so. They are too anxious to act the master, when they should act more as friends and assistants. As an illustration, take the following case, reported in the daily papers among the proceedings of the police courts:

OFFICER ——'S ASSAILANT.

"Officer M. D. ——, charged with assault and battery by Addie M——, took a change of venue when his case came up before Justice Prindeville yesterday, and went before Justice Hammer. The evidence was not materially different from the facts as published the day after the issuance of the warrants by Justice Prindeville, January 3.

"Addie M—— and Rosa L—— were arrested the day before, charged with disorderly conduct, and were discharged January 3, by Justice Prindiville, on payment of costs. When they stepped outside the court room, Officer —— tried to arrest Addie M—— for an attempted assault with a deadly weapon on him when he had Rosa L—— under arrest the day before, though he had not known anything about the assault until he was told of it afterward by Officer S——, who took a pocket-knife from Addie M——'s hand. Justice Hammer said he thought it a little singular that a man should have to be told about an assault on himself, and said the arrest at the court-room door, without a warrant, was unauthorized under the circumstances, and fined him \$3, the lowest fine for this offense.

"There are some facts in regard to Officer —— and his fight against this woman which were not brought out in evidence. A few nights ago he arrested her on a charge of disorderly conduct, but as nothing was proved against her, she was discharged by Justice Prindeville. Having gained the animosity of this officer, she will have a lively time, for the whole police force is now arrayed against her. A police official said yesterday that she would leave the South Side if she knew what was good for her."

One would think that such an incident as the above would cause the immediate discharge of the police officer concerned; but nothing of the kind is even dreamed of—on the contrary, so trifling is the matter regarded that the smallest fine possible is inflicted.

Think a moment about this condition of things. Even if it were true that the woman was not of good repute—though nothing of the kind was proven—would her case not be sad enough already? Ought she not to be at least let alone until she actually commits an offense? What possible good can result from having a brutal police officer seize her whenever he gets sight of her, and forcibly drag her off to the lock-up and make her spend the night there, for no other reason than that the police officer *thinks* she is not a chaste woman? I repeat, suppose she were disreputable, what possible good can come of such treatment? Is it not alone sufficient to ruin her even if she were an angel at the beginning? If this were an isolated case, it might not deserve much attention; but it is simply a specimen of what is happening every day in every large city in this country.

Again, every year hundreds of persons, generally boys, are "run in" by the police, simply for being found sleeping in sheds, stables, and other like places, and being unable to give a satisfactory account of themselves. When their case is called by the police magistrate, they are charged with being vagrants, or with being disorderly, a fine is imposed, which they, of course, are not able to pay, and then they are sent to the Bridewell to work out their fines. Here they remain from ten days to six months.

See how tenderly we care for the homeless. If a boy who has nowhere to go when nature is exhausted, ventures to lie

down in a shed, we seize him with the strong arm of the law, as if he had committed a murder, and forthwith send him to prison. Now what effect does all this have? The sentences are short, for, as the unfortunate beings were not charged with anything in particular, the sentence could not well be long. They are imprisoned "for the fun of it," as it were, "just to keep them out of mischief, you know." But what will they do when they get out? Why, nothing is left then but to do the same thing and make the same prison rounds. Would it not be madness even to imagine that any good could come of this? Experience has shown over and over that just the opposite follows; that this process produces exactly those results which society is anxious to prevent.

As early as 1822, the Hon. Hugh Maxwell, District Attorney of New York, speaking of this class of cases, said :

"None of these have actually been charged with crime, or indicted and arraigned for trial. It includes those only who are taken up as vagrants, who can give no satisfactory account of themselves; children who profess to have no homes, or whose parents had turned them out of doors and taken no care of them; beggars and other persons discovered in situations which imply the intention of stealing; and numbers who were sleeping in the streets or stables. These miserable objects are brought to the police office under suspicious circumstances, and, according to the result of their examinations, they are sentenced as before mentioned. Many of these are young people on whom the charge of crime can not be fastened, and whose only fault is that they have no one on earth to take care of them, and that they are incapa-

ble of providing for themselves. Hundreds, it is believed, thus circumstanced, eventually have recourse to petty thefts, and commit the misdemeanors in order to save themselves from the pinching assaults of cold and hunger. That many of these might be saved from continued transgression, no one can doubt who will examine the records of the police office. Many notorious thieves now infesting the city were at first idle, vagrant boys, imprisoned for a short period to keep them from mischief; a second and third imprisonment is inflicted, the prison becomes familiar and agreeable, and at the expiration of their sentences they come out accomplished in iniquity."

Since Maxwell wrote the above, more than sixty years have confirmed his observations and shown that the above treatment defeats its purpose and produces not only the repeaters for our prisons, but the thieves and dangerous criminals we so much dread. Is it not time to try something else? The Inspectors of the Penitentiary for the Eastern District of Pennsylvania, in their report for 1881, say on this head :

"Yearly the crime-cause of youths is developing; yearly the temptations to crime are increasing; yearly it is more and more apparent that the state has utterly neglected provision for a large number of minors who are moving in the direction of crime, because there is no adequate prevention presented. Congregating youth in a place of detention, more of a prison than a refuge—for loss of liberty by compulsion, and detention by force, is all that a prison pretends to be—is too often making criminals of some who else might be restored to good conduct and made useful citizens. It is congregation under such circumstances that produces the

mischief. Congregating, associating youth, deprived of their freedom, as a penalty for some offense of omission or commission, is but training them by such associations for no higher aim in after life. *The stigma—the fact of a quasi prison graduation—does not tend to lift up the man out of the degradation of such youthful associations.*”

The Prison Principle.

The Superintendent of the Michigan State Reform School, in his report for 1880, says :

“The prison principle is hateful to the adult delinquent ; to the youthful offender it is abhorrent. The prison principle in reform peculiarly outrages the nature of child life ; the shock penetrates his being, and body and soul rise up against it in fiercest antagonism. * * * To the boy, the bolted door, the barred window, the walled yard, and other contrivances of brute force, are enemies that he will resist with all the force of his nature, though he is apparently rendered helpless against them. I believe that these barriers against the cravings of his child nature, instead of tending to his reform, have rather a contrary effect, and will hastily develop any criminal germs which may exist in his nature. The question does not naturally occur to him, ‘How shall I reform through these agencies?’ but rather, ‘How may I escape from them?’ and to the solution of this question his best energies are devoted. * * * It frequently causes expressions of surprise to see children of such tender age and innocent appearance brought to our institution, and the question, ‘What could he have done?’ is asked very often ; and yet it is of common occurrence for a powerful officer to present himself

at our office, having in his custody a frail lad who has scarcely seen ten summers, bound with handcuffs to prevent him from escaping or from making an assault on his brave custodian.”

What is here said about the effect of the prison principle on a boy applies with equal force to the adult who is not yet inured to crime.

All Treated Alike.

At present, all offenders are treated precisely alike, so far as personal treatment is concerned, the only difference being in the length of sentence imposed upon conviction. And even herein strange things are done. But as already stated, the personal treatment is the same in all cases. The man entirely innocent, as well as the boy arrested for some trifling offense, is treated from first to last like the midnight burglar, the highway robber, or the chronic criminal. Arrested on the street, and not infrequently clubbed, often handcuffed, and led in irons to the police station, there he is pushed into a cell as if he were a dumb brute. He spends a night with the vicious of every kind. In the morning the police magistrate goes as a matter of business—and if it were a matter of conscience he could, under existing laws, not do much better—to the station to dispatch the ten to forty cases that have been put on his docket since the previous morning ; and being anxious to get away, he performs his task in the shortest possible order. The cases are called, one after the other, in rapid succession, as if they represented so many bundles of merchandise to be shipped ; and as each is called, the police officer making the arrest makes his statement ; the prisoner may say something if he

wishes, and this is generally all there is of the trial. In this proceeding, the boy mentioned fares precisely like the old offender charged with a heinous crime. He takes his position on the sawdust in the bull-pen till his case is called, and, if discharged, goes free (and it appears that in 1882 over 10,000 were discharged in one city by the police magistrates alone, showing that nearly one-third of all those arrested were wrongfully arrested). If not discharged, he is, in case the charge is one which the grand jury must consider, bound over, and, failing to give bond, is sent to jail. There he is weighed and measured, the color of his hair and eyes is set down,—in short, a complete description is taken of him. Then he is hustled off among a lot of other prisoners, the iron door is shut behind him, and he stays there for weeks—sometimes for many months—before his case is reached. Then perhaps the grand jury refuses to find an indictment (for nearly one-fourth of those bound over are not indicted), in which case he is discharged. Should he be indicted, he is arraigned and sent back to jail. In the course of weeks, sometimes months, his case is tried. If then acquitted by a jury, he goes free; if not, he is sentenced to a further period in jail, or is sent to the house of correction, where he is set to work among several hundred prisoners, some of whom are of the most abandoned sort. Having served out his sentence, he is set free. If, however, the offense for which he was arrested is one for which the police magistrate can impose a fine, then, instead of being sent to jail and going the round above mentioned, he is fined; and, having no money to pay, is put with a great many others into an omnibus, or "Black Maria," with iron bars at windows and door, and is then driven to the house of correction—a

short-term penitentiary—to serve out his fine. Of course, if he has friends who will bail him out, or pay his fine, he will escape a part of the imprisonment.

In the meantime, the vicious and hardened criminal, arrested for burglary, or highway robbery, or some other equally heinous crime, is treated precisely like the boy whose case we have been considering, except that when taken from the jail he is taken to the penitentiary and is sentenced for a longer term of imprisonment.

No Good Results.

Now does anybody suppose that a boy or man, either innocent or guilty of only a trifling offense, will be benefited by the above treatment? *Does clubbing a man reform him? Does brutal treatment elevate his thoughts? Does handcuffing fill him with good resolves?* Stop right here, and for a moment imagine yourself forced to submit to being handcuffed, and see what kind of feelings will be aroused in you. Submission to that one act of degradation prepares many a young man for a career of crime. It destroys the self-respect of others, and makes them the easy victims of vice. Even the morally strong will look back with hatred to the day on which they were subjected to outrage, and down deep in their souls they will hate the system and the men who wronged them.

Every man is sensitive about the treatment of his person, and feels that he is injured when he is rudely jostled about, or forced into humiliating surroundings. Is it, then, reasonable to suppose that the remainder of the treatment above mentioned—the thrusting into a cell with old criminals, the standing in the so-called bull-pen, or prisoners' dock—will

not injure those who are innocent, or that it can possibly have any reformatory influence upon the young man who, although he has violated some law, is not yet depraved, has not yet lost his self-respect, and is yet desirous of living an honorable life? Nay, if he has any ambition at all, will it not have just the opposite influence? Will he not feel like being revenged? Will he not consider this whole machinery as his foe, and will he not be more ready to commit crime, if he can but escape detection, than ever before? I claim, therefore, that imprisonment for trifling offenses before convictions, except in extreme cases, is wrong in principle, and works a great injury not only to those imprisoned, but to society itself.

To save the weak and neglected from becoming criminals, the all-important thing is to develop and build up their self-respect—their manhood and womanhood. So long as this is wanting, their natural course is downward; and any act that tends to crush this only pushes them lower down.

In October, 1870, there was held at Cincinnati, Ohio, a National Prison Reform Convention. It met in pursuance of a call signed by a large proportion of the governors of the states and upwards of one hundred persons eminent in the cause of prison reform. The convention was composed of several hundred members from all parts of the Union, and was presided over by the Governor of Ohio. Being largely made up of persons familiar with the practical management of prisons and deeply interested in the subject of prison reform, its proceedings were distinguished for marked ability. It continued in session six days and did a great amount of work. As a result of its deliberations, it formulated and adopted, with almost entire unanimity, a declara-

tion of principles, thirty-seven in number, of which the *sixth* is so apposite to the point now under consideration that I give a part of it here:

*"Sixth. It is essential to a reformatory prison treatment that the self-respect of the prisoner should be cultivated to the utmost extent, and that every effort be made to give back to him his manhood. Hence all disciplinary punishment that inflicts unnecessary pain or humiliation should be abolished as of evil influence. * * * There is no greater mistake in the whole compass of penal discipline than its studied imposition of degradation as a part of punishment. Such imposition destroys every better impulse and aspiration; it crushes the weak, irritates the strong, and indisposes all to submission and reform. It is trampling where we ought to raise, and is therefore as unchristian in principle as it is unwise in policy."*

If the imposition of degradation has the effect above described on actual convicts, what effect must it have on the innocent, and on the thousands who are daily dragged into our police prisons not even charged with a crime but simply with being *disorderly*? Incredible as it may seem, we now daily take thousands who are not criminals and subject them to almost every kind of degradation—do what we can to crush the weak and irritate the strong—do what we can to destroy the self-respect of all and send them from bad to worse; and when they finally land in the penitentiary, then we discover that in order to restore them to society we must undo everything we have done.

CHAPTER VIII.

TREATMENT IN HIGHER PRISONS—CRUELTY NEVER EFFECTED A CONVERSION—THE WONDER IS THAT ANY SURVIVE.

Recently there have been some revolts in several penitentiaries, and precisely those where, according to report, the greatest cruelty is practiced—notably in one of the penitentiaries of New York, in that of Missouri, and in that of Arkansas. In the latter state, the convicts are leased and the lessees manage the institution as a close corporation, refusing to give anybody any information in regard to the condition of the convicts.

Concerning this prison, Mr. Wines, in his great work on Prisons, at page 200, says :

“The lease system of prison labor in Arkansas has been weighed in the balance by a joint legislative committee, and clearly found wanting by the evidence as well as by seven of the sixteen members of the committee. The evidence, as is commonly the case in such inquiries, was not a little contradictory ; but to my conception the following points were established : That the prisoners were not properly nourished, being fed mostly on beef and corn bread, with vegetables occasionally, but not commonly—the beef being so poor, so devoid of nutritive qualities, and so indigestible, that its introduction into the human stomach proves an irritant which generates the larger part of the diseases, such as

diarrhœa, dropsy, etc., known in the institution. That the prisoners are overworked, the hours of labor being usually more than twelve per day, and those who work on a farm five miles from the penitentiary being often forced to walk or trot rapidly, especially in returning after work, thereby inducing over-heat, hæmorrhages, heart disease, and other forms of sickness. That shocking cruelties are practiced upon the prisoners to get work out of them, as well as to maintain discipline, so that many bear marks of violence upon their persons for months after its infliction. That the hospital is unfit for its purpose, being extremely filthy and noisome, sheets and pillow-cases often dirty or wholly wanting, food unsuited to the needs of such persons, proper stimulants deficient and hard to get—the whole being more likely to intensify and even generate disease than to serve as an agent in its cure. And that, to sum up all in a word, the penitentiary is turned into a speculative establishment, in which the convicts are the stock in trade of the lessee, in the prosecution of whose business they are so many mechanical contrivances, to be used for the accumulation of wealth, and operated with little regard to the fact that they are children of the same Father, or even that they are, blood and tissue, vitalized and controlled by the same physiological laws of waste and repair common to all mankind.”

On the other hand, in those institutions which have been managed most successfully, where the best results have been achieved, both in maintaining discipline, making the prison self-sustaining, and reforming the prisoner, kindness has been the most conspicuous factor in the treatment. Quoting again from Mr. Wines :

“Cruel treatment was once generally esteemed the most sure, just, and only fitting method of penal discipline. But

the period is well passed when the interior of a prison is to be the arena for the exercise of brutalizing forces upon erring and wicked men. The thought and action of the present have emerged from the dark shadows of the last century. Surely, all means of penal control which are severally restrictive of the mental, moral and physical good of the convicted criminal, and manifestly tyrannical, simply because an opportunity is afforded or created, do not conserve the high purpose of calm, helpful justice. The government which works out the best results for its subject secures therefrom something more than a machine-like obedience. Submission to rules, and the concurrence in an enforced task, which are not beyond reason, can be secured in the vast majority of cases, in well regulated prisons, by means which are at hand and which are far removed from cruelty. In so doing, the prisoner's self-control is evoked, and habits of industry acquired, which can never be brought about by the crushing process so much lauded by conceited and inexperienced prison reformers."

The inspectors of the Maine Penitentiary say on this point :

"For many years the discipline of the prison has not been as strict as at many other prisons ; it has not degraded the prisoners below the brute creation, but has recognized them as men and taught them to believe that the state had an interest in them beyond their term of imprisonment. For this reason I believe that a large majority of them have left the prison without bitter and revengeful feelings, and with a determination to live better and more useful lives. To this state of affairs is largely attributable the fact that there is very much less of crime in Maine, in proportion to its population, than in any other state."

Cruelty Never Effected a Conversion.

There is in the entire history of the human race not a single instance wherein cruelty effected a genuine reformation. It can crush, but it can not improve. It can restrain, but as soon as the restraint is removed, the subject is worse than before. The human mind is so constituted that it must be led towards the good, and can be *driven* only in one direction, and that is toward ruin.

Florian J. Ries, inspector of the House of Correction of Milwaukee, in managing which he achieved a signal success, in his report for 1880, says :

"The subject of reforming convicts is one that ought to be entitled to the very first consideration in the management of a prison. The idea that a prison is solely an institution for the *punishment* of violators of the law, is fast becoming obsolete, and one more humane and in keeping with our advanced civilization is taking its place. Experience has taught, and humanity demands, that the discipline of a prison be directed more toward the moral improvement of its inmates than to punishment or to torture." And in his report for 1881, he says : "As to the management of prisoners, I have very little to add to my report of last year; *my experience has fully convinced me that by kind treatment and by appealing to the better instincts of human nature, better results can be obtained than in any other way*" (The italics are mine.) He then adds : "Yet all that may be accomplished with the prisoner in this manner, inside the prison, will be of little avail after he is discharged, unless he finds friends who are willing to lend him a helping hand, and encourage him in his effort to lead a better life." But this only demonstrates

the necessity of letting him earn something for himself before discharge, so that he can maintain himself, as explained under the head of Prison Labor.

The Wonder is that any Survive.

The real wonder is, not that so large a percentage of those once arrested and imprisoned become hardened and inured to crime, but that comparatively so few do. The wonder is that any are able to outlive and overcome the effects of their degrading experience; and the fact that over half of them do so, shows that human nature is not so depraved. For all these live respectable lives, not by reason of, but *in spite of*, their experience. As the American Colonies prospered in spite of, and not by reason of, the protection Great Britain had given them — the protection having been wholly of a kind that tended to impoverish the Colonies — so the large percentage of the men once arrested, who do well, do so in spite of, and not by reason of, their hated experience.

The principle and love of right, the longing to be respectable and live honorable lives, was so strong in them that it overcame the degrading influences to which they had been subjected. Herein lies one of the objections to our present system. It applies the *crushing process* to those who are already down; while the crafty criminal — especially if he be rich — is gently dealt with.

CHAPTER IX.

PUNISHMENT MUST BE, FIRST, NECESSARY; AND, SECOND,
CALCULATED TO PRODUCE THE DESIRED RESULT —
EXAMPLES UNDER THE PRESENT SYSTEM.

Society never has claimed, and does not now claim, the right to punish for an infraction of the moral law. The right to chastise for an act because of its violating the eternal principles of right and justice, has always been, and still is conceded to be, the exclusive prerogative of the Almighty. Society never claimed more than simply the right to punish for a violation of its laws; and this right has always been and still is based on the benefit to be done to the whole.

The fundamental principle upon which man assumes the right to punish his fellow-man is, that society as a whole may be protected. It is therefore clear that any act thus done, that is *not necessary for the protection of society*, is unwarranted and wrong; is absolutely indefensible upon any ground whatever; is nothing less than a deliberate injury, done by the strong to the weak, and is therefore, in the highest degree, cowardly; and no man can participate in such an act without becoming morally accountable for the injury thus done to another.

Second, it is also clear that any act thus done, *which does not tend to protect society*, must be indefensible, and, like the other, a wrong inflicted by the strong upon the weak, for which there can be no excuse.

True, society has to learn by experiment, and it therefore may be excused for some things done in the hope that they will result in protecting the whole. But whenever experience shows that certain things do not answer the purpose for which they were intended, then the right to continue them ceases. That is, whenever it becomes apparent that certain acts done for purposes of punishment do not serve the purposes for which they were intended — *i. e.*, do not tend to protect society—then the right to continue or repeat them ceases, and any further repetition of them will be simply a wrong done by society to one of its members, an injury inflicted by the strong upon the weak ; and it is no excuse to say that the member had first injured society, for one wrong never justifies another. If society has been injured, it may punish the offender in order to prevent a repetition of the offense, either on his part or on the part of others ; but it must prescribe a punishment or treatment that will be likely to produce this result, and it has no right whatever to do an act which it has found does not serve this purpose. As an example under the first head, take the case of a cigar-maker in a small country town, who is arrested by a United States marshal, taken seventy or eighty miles before a United States commissioner for an examination, then bound over to the grand jury, and, being unable to give bail, is put in prison for from one to six months, until that body meets. Then he is indicted and kept in jail some time longer until he can be tried, and when tried he is convicted, is fined from ten to one hundred dollars,—and all this not because he was really a vicious man, not because he was a dangerous man, not because he had stolen something or injured somebody, but simply because he had failed to put a dollar revenue stamp

on a small box of cigars which he had manufactured and sold. He may be an industrious, sober man, struggling to the best of his ability to make his family respectable and comfortable. But all this counts for nothing. Some United States detective has been prying into the little shop ; a technical violation of the revenue law has been discovered ; there is a chance for the detective to win some credit for alertness, and for the United States marshal, United States commissioner, and prosecuting attorney, to make some fees. So the man is arrested, dragged away from his family, who are frequently left without any means of support in the meantime, and is treated precisely as if he had committed a murder or a highway robbery. Could anything possibly be more absurd ?

Granting that the law had been violated, and that it was proper to inflict some punishment when he was convicted, will anybody claim that it was necessary to arrest him and have him in jail a long time before he was convicted ?—and if it was not *necessary*, then it was not justifiable. As the offense was trivial, and the danger of escape therefore slight, he should not have been deprived of his liberty until convicted. For, mark you, wealthy offenders never are. They are always able to give bail ; so that it is only the poor who are thus made to suffer. Cases of similar wrongs are of much more frequent occurrence under the state and municipal laws. Almost daily there are arrests on trivial charges, where, in case of conviction, the punishment generally is only a fine, and therefore there is no danger of escape ; yet, as the persons arrested are not able to give bond for their appearance, there is no alternative but to send them to jail, there to remain for weeks, frequently

months, before they can be tried. And when tried, if convicted at all, they are simply fined, or possibly have a short jail sentence imposed. Now, in nearly all these cases, it is *unnecessary* to make arrests in the first instance, as a civil proceeding would answer every purpose until the trial; then, if the fine is not paid, it is early enough to introduce the jail. Arrests in the first instance in this class of cases being *unnecessary*, they are, as above shown, unjustifiable, and are productive of much harm without any compensating good.

Again, there are things done daily in the name of punishment which common sense condemns, which all experience has shown to be productive of just the opposite results from those designed and desired, and which society has therefore no right to continue practicing. Thus, of the 7,566 prisoners committed to the House of Correction at Chicago during 1882, 4,787 were simply charged with breach of the peace. Granting that some of these had committed grave offenses and the charge was changed, still could anything be more unreasonable than to every year subject over 4,000 human beings to a regular criminal treatment, as heretofore described, simply because they had been guilty of hilarious or disorderly conduct?

CHAPTER X.

IMPRISONING WOMEN.

It appears from the report of the Superintendent of Police of Chicago that in 1882 there were 6,835 women arrested and taken to the police prisons in Chicago in that year,¹ and 1,809 women were during that year incarcerated in the Chicago House of Correction, mostly for non-payment of fines which had been imposed. Of the latter, 359 were reported prostitutes, 871 were servants, 114 were launders, and all were poor. Now, can any good come of thus treating unfortunate women? What are they to do when released? Can anybody tell? The 359 whom the officers call prostitutes, and think that a sufficient accusation to excuse any kind of treatment, were not the petted children of sin, not those that live in gilded palaces and dress in silks and satins, for these are rarely disturbed; they were the poor unfortunate and forlorn creatures who, without friends, without sympathy, without money, often hungry, and without sufficient clothing to protect them from the cold winds, wander out on the streets, not so much wantonly as from necessity, literally trying to sell their souls for a morsel of bread, dealing in shame not from choice but because every Christian door is shut against them, because there is no place where they can work and find shelter. Now, what condition are they in when they have gone through the above experience? What are they

¹ The number has been increasing every year with the number of arrests.

to do when set at liberty again? Experience has answered this a hundred times. They return to their old ways, because there is nothing else that they can do; the only difference being that they have become more degraded, more brutalized, by the treatment received, and from which no good ever has or ever can come. Is it, therefore, reasonable to continue it?

Take the other 1,450 women who in 1882 were incarcerated in the Chicago House of Correction; what is to become of them when released? What can they do? What has the prison fitted them for? Some of them, no doubt, have homes to which they can go; but they will enter these more degraded because of the experience they have had, and instead of being better prepared to resist temptations than formerly, they are weaker and more liable to go downward than otherwise. As to the remainder—those who have no homes where they can be received and taken care of—what are they to do? Where will they be admitted? How can they make an honest living? There is no answer to this question, and the probability is that the great majority will be literally driven to get their bread by the wages of sin and go down the path of vice and misery, dragging out an existence that will long for death. Now, wherein has society been benefited or protected by the above treatment? Clearly in no way. On the contrary, it has done itself an injury, and the wretched beings, charged only with slight offenses, a great wrong. It is both *unnecessary* and *unsuitable*.

In the reports of the proceedings in the city police courts, as published in the daily papers, you can see almost every day items like the following:

“The seventy vagrant and disreputable women corraled

in the basement pen of the Desplaines Street Police Station, Wednesday night, were brought before Justice C. J. White yesterday in a lump. Sin-hardened, sad, poor, and unhappy, the haggard crew presented a sickening sight. Most of them escaped with light fines, the justice recognizing that these wrecks of human beings deserved merciful consideration.”

“Bridget Smith, a poor woman whose path through this world has led her through several terms in the Bridewell, was found drunk in the snow Sunday night at the corner of Desplaines and Adams streets. For this mistaken idea of getting enjoyment out of life, Justice C. J. White sentenced her to another short term in the said institution on a \$10 fine.”

And at another time the following:

“There seems to have been a general raid by the West Side police on the disreputable women found on the streets. At all events, twenty of the poor creatures were before Justice White yesterday, and fourteen were arraigned in Justice Woodman’s court. They were mostly a dissipated, worn-looking lot, most of them shabbily dressed, but three of them were young and rosy, and one was a mere child, hardly 15 years of age. Fines ranging from \$1 to \$5 were inflicted, and the poor misguided mortals passed out of court.”

Reflect on this a moment! Was it necessary to drag these unfortunate creatures in every few weeks and corral them like cattle? And wherein has society been benefited by the whole proceeding? What object was there in all this? Certainly none can be perceived, except to make a large amount of fees for the police justices. Several dollars

cost in each case in which the fine is paid, extracted from these miserable people, may be satisfactory to the police justice, but what is to become of the women? One of the accounts says, "they passed out of court." Of course they did; but where to? Why, a great many of them to the Bridewell, because they did not have from \$3 to \$5 in the world, nor any friend to pay the amount for them. And when they get out of the Bridewell, what are they to do? Is there any other course open than to make the same round? Mind you, they were not the gay and luxurious sirens, for these, though numerous, were not disturbed.

Now, if it were even conceded that some measures were necessary in the premises, it certainly cannot be claimed that the above proceedings were necessary, much less that society is benefited by them. This being so, where is the justification for these proceedings?

Take the woman found drunk in the snow. She is sent to prison time after time—simply to lie down in the snow again. The very frequency of the sentences shows that they only aggravate the case, and serve no good purpose; so why continue repeating them?

Take the following item from the police court proceedings:

"The officers of the Humane Society brought William Hogan, his wife, and four children, into Justice R——'s court yesterday for disposition. They had been existing in a hovel at the corner of Stave street and Armitage avenue, in the most squalid poverty and destitution. There was no fuel or food in the place, and little or no bedding. The family were in rags, were dirty, and were all covered with vermin. Their condition, as they appeared in the court-

room, was at once disgusting and pitiable. Mr. and Mrs. Hogan were sent to the Bridewell, and the children, aged 5, 7, 9 and 11 years, were sent to the Home for the Friendless."

Think of a system that will send a woman to a penitentiary simply because she is the mother of four small children and has a husband who either cannot or will not support her! As to the husband, if he was unable to do anything he should not have been sent to the Bridewell; and if able, then he should be required to earn something for his family. We have already kept up the practice too long of crowding our prisons with those who ought not to be there, and as a consequence we find that prisons no longer have any terrors for those who should be there.

CHAPTER XI.

THE PRESENT INDISCRIMINATE FINING LEADS TO NO GOOD RESULTS.

If any person wants an accurate idea of how this is carried on, let him attend at one of our so-called police courts on some morning when from ten to thirty miserable beings, many filthy and squalid, are "trotted through." The charges are usually of the minor sort—"drunk," "disorderly," etc. Generally a fine of from five to one hundred dollars is imposed; and what then? Well, if they can't pay it they are packed into the omnibus and taken to the house of correction, as already mentioned, and there they "*work it out*," as heretofore explained, the time required for this purpose being from ten days to six months; and when they get out, the conditions in which they lived before having in no way improved, on the contrary, generally become worse, they almost immediately make the same rounds again, and then again, getting a little worse every time until they land in the penitentiary.

But in many cases the fine is paid, often even after commitment to the house of correction; and of course the prisoner is discharged.

But who generally pays this fine? Here is the vital question. Usually the prisoner does not pay it, for as a rule he has nothing but the rags on his back. Well, then who pays it? Why, generally his squalid family. The wife pawns

whatever she may have left in order to get her husband out; or more often it is the mother who already is unable to properly feed and clothe her smaller children, and who is suffering from the ailments, both physical and mental, that a life of poverty and misfortune entails, but who will yet, by heroic effort, scrape enough pennies together to pay her child's fine and get him out. Well, the fine being paid, then what? Why, the conditions being all the same, the companionship the same, there having been nothing at all reformatory or elevating in the experience the offender has gone through, he is in no wise better, is no more industrious, no more sober; and, instead of being morally stronger and better able to overcome the weakness that got him into trouble, his prison experience has, if anything, lowered him; he is less able now to cope with the world than he was before, and the almost invariable result is that he goes the same round time after time, becoming constantly more vicious, and in the end swells the number of hardened criminals. Take the hundreds of poor women fined in the police courts; if they pay their fines themselves, it takes usually their last penny, and not infrequently the very money with which they pay the fine is the earnings of shame. *So that while the law with one hand prohibits vice, it pockets the earnings of vice with the other.*

Now every time a fine is paid in any of the cases mentioned, the crime-producing conditions have been aggravated; the want before existing has been intensified; the offender has not been benefited, while his family has been injured. Fines should therefore be imposed only in exceptional cases, where nothing of a reformatory character is required.

CHAPTER XII.

FORMALITY—INEQUALITY OF SENTENCES.

The present system is *formal, iron-bound, and superficial*; every case has to go through the same steps, no matter how much the circumstances may differ; the proceedings must be the same, no matter how trifling the charge; the accused must be *arrested*, then must either *give bond* or be *locked up* until he can be tried and the fact be ascertained whether he is even guilty of the trifling offense charged or not, and if found guilty, then no matter what the condition of the accused may be, whether old or young, vicious or merely weak, male or female, there is but one course open, and this for all alike; that is, to impose a fine, and if this is not paid, to send the accused to the jail, or Bridewell. The magistrate is not to blame; it is the law, the system, which is at fault.

If the state were to enforce a system of medical practice, and were to provide that but one prescription should be given for all the ills that afflict the flesh, it would not be more absurd than is the present system of treating offenders.

Inequality of Sentences.

In the Fifth Biennial Report of the Michigan State Board of Corrections and Charities, 1879-80, the subject of "Inequality of Sentences" is thus considered:

"Having still in view our analogy between crime and

mental disease, which analogy we do not claim to be one that is perfect and holding at all points, yet holding sufficiently to justify what we have said and what we shall say, we shall conclude this paper by a few moments' commentary upon the sentences of the courts.

"We can stay but for a single example of the inequality of sentences, growing out of qualifying circumstances and the inability of judges to see things alike, or, as in the case of the one referred to, form opinions even for themselves.

"Assault with intent to commit murder, *intention* being the gauge of crime, necessarily implies the *guilt* of murder.

"In Michigan, during the year ending September 30, 1877, there were eight convicts sent to the state prison for assault with intent to commit murder—one for 45 years, one for 25 years, one for 15 years, one for 9 years, one for 6 years, one for 5 years, one for 2 years, and one for 1 year.

"It is supposable that these eight men, so sentenced for the same technical offense, may have been seen in prison working in the same department, eating at the same table, listening to the same prayers in the chapel, with occasional opportunities for surreptitious exchange of notes as to their respective allotments of justice and their progress in reformation—reformation being agreed upon, in all such conferences as this, as one of the chief ends, if not the chief end, of punishment.

"This inequality of sentences runs through all the courts. Cases like this (an actual case) occur somewhere in the United States every month in the year. At the same term of the court a bank teller, for a theft of \$500 from his employers or from a customer, is released on nominal or suspended

sentence, while a boy of seventeen is sentenced to prison for three years for stealing a second-hand suit of clothes worth less than \$20; producing in appearance distortions of justice a little like Lord Dundreary's distortion of proverbs when he says, 'one man is hanged for looking a gift horse in the mouth, while another may see the whole animal over a hedge and get clear.'

"The damage to society of a given offense can be approximately estimated; the guilt of the transaction is beyond man's power of measurement.

"Then why not better to cut the Gordian knot and proceed for the good of society; estimate the offense according to its damage and danger to society, and at once remove the offender, not for one, two, ten, or forty-five years, but until he is apparently restored to such condition, whether mental or moral, or both, as will give the public reasonable assurance of safety?

"If there were high courts or commissions in lunacy, and they were to commit eight maniacs who had attempted murder, from one state, in a single year, to an insane hospital for terms varying from one to forty-five years, it would at once be apparent to all that the high court itself was wildly insane. If, on the contrary, the would-be murderers were sent to a hospital until wholly restored to reason, the conduct would appear to be reasonable.

"But if the criminals are put under restraint by a similar seclusion in buildings suitable for the purpose, that is, in prisons properly provided and graded, it may be asked: How shall it be ascertained, with certainty when they are so far reformed as to make their enlargement safe to society?

"The answer is, that we can not know with certainty, but it can be known at least equally well in this case as in the cases of insanity. Some insane patients are discharged apparently cured, three, five, or ten times, but are found still dangerous to society, and have to be returned to the hospitals, and ultimately die without recovery. There will be mistakes, incident to imperfect human knowledge.

"Criminals sentenced for limited terms are discharged and re-committed over and over again, with this difference against the good sense of the proceeding, that there is, in the majority of cases, no appearance of reformation, but, on the contrary, perfect knowledge on the part of the authorities that they are turned out more and more dangerous to society at each successive time."

The following table, taken from the Report of the Commissioners of the Illinois Penitentiary at Joliet, for the year ending September 30, 1882, shows what incredible difference there is in the length of sentences imposed for the same offense in the state of Illinois:

Comparative Table of Sentences and Crimes, showing their relative connection with the number of convicts in the Illinois State Penitentiary, September 30, 1882.

CRIMES.	SENTENCES.											Total on hand.	
	One year.	Between one and two years.	Two years and fractions.	Three years and fractions.	Four years and fractions.	Five years and fractions.	Six, 7, 8 and 9 years and fractions.	Ten years and fractions.	Eleven to fourteen years & fractions.	Fifteen to twenty years inclusive.	Over twenty years and less than life.		Life.
Abduction			1			1							2
Arson	1		2				3	2					9
Assault, etc.	2												2
Assault to commit burglary		1				1							2
Assault to commit felony						1	1						2
Assault to commit larceny	1			1									2
Assault to do bodily injury		1	1										2
Assault to kill	5	4	2	1	6	7	2						27
Assault to murder	2	2	6	4	3	6	4	6	2	1			36
Assault to rape		1	3	1	1	2	7	1	3				19
Assault to rob			3	2		1							6
Attempt to procure abortion			1	1									2
Being found in postoffice with intent to steal				2									2
Bigamy	2		1										3
Buggery						1							1
Burglary	73	16	87	49	19	33	33	10	4	11			335
Burglary and larceny	42	5	45	39	16	22	15	5	2	2			193
Burglary and larceny and arson			1	1			1	1	1				5
Burglary and larceny and assault to kill								2	1				3
Burglary and larceny as bailee			1										1
Burglary, murder and assault to kill									1				1
Burglary with intent to steal			1										1
Confidence game		1	3	4	3	2		2					15
Conspiracy			3	4									7
Conspiracy and larceny			1	1									1
Conspiracy to commit offense			1										1
Counterfeiting			2		1	1		1					6
Crime against nature			1										1
Cruelty to children	1												1
Embezzlement	1	1											4
False affidavit to procure money			1										1

CRIMES.	SENTENCES.											Total on hand.		
	One year.	Between one and two years.	Two years and fractions.	Three years and fractions.	Four years and fractions.	Five years and fractions.	Six, 7, 8 and 9 years and fractions.	Ten years and fractions.	Eleven to fourteen years & fractions.	Fifteen to twenty years inclusive.	Over twenty years and less than life.		Life.	
Felony													8	
Forgery	13		7	10	2	4	3						41	
Forgery and larceny		6	1	8	8	4	3	1	1				2	
Grand larceny													35	
Grand larceny and burglary										1			1	
Having in possession burglars' tools													2	
Horse stealing						1	1						2	
Incest						3	5	5	1	1	1		16	
Larceny	82	10	64	75	13	31	23	10	3				7	
Larceny & confidence game													311	
Larceny and embezzlement							1						1	
Larceny from postoffice						1							1	
Larceny and receiving stolen property													1	
Larceny and robbery		1											2	
Making and uttering fictitious notes	1	1	2				1						5	
Malicious mischief	1		1	2	1								5	
Manslaughter	1	2	2	2	1	8	4	4	1			2	27	
Mayhem	1												3	
Murder							2	4	5	26	31	20	52	140
Obstructing railroad	1													1
Obtaining money by false pretenses	1													1
Passing U.S. count'fit coin							2							2
Perjury		1	1	3				1						6
Personating another	1		1											2
Rape					3		1							15
Rape and assault to rape									5		2	2	2	1
Receiving stolen property														1
Robbery	11	7	12	15	15	11	16	10	5					4
Robbery and burglary							1	2						104
Robbery and larceny			3							1	1	2		3
Sodomy														7
Total	249	48	265	239	85	155	138	70	56	59	29	56	1,449	

A glance at this table shows that sentences imposed for the same offense range all the way from one to twenty years. Of course, allowance must be made for the fact that some of the crimes were committed under more atrocious circumstances than others of the same class; still, the great diversity, after all, is due to the fact that the different cases are tried before different juries and different judges. For it not infrequently happens that in the same court a man who has deliberately committed a crime under circumstances showing great depravity, will be sentenced for a much shorter term than another who has committed the same offense under circumstances showing far less depravity. So that, practically, we have the same law sentencing the hardened offender to a short term, and the less dangerous for a long term for the same offense. Now, if fixed sentences were entirely abolished and indeterminate sentences (to be presently discussed) were substituted, this would not happen so frequently.

CHAPTER XIII.

REMEDY.

I am aware that it is difficult for one man to see all sides of a complicated question, and that all new remedies are apt to prove crude and more or less impracticable when attempted to be applied—for the perfect remedy is the outgrowth of experiment. Still, every improvement must have a beginning, crude though it be; therefore I venture to give my views freely, and leave it to those who have examined and considered the subject more thoroughly to suggest something better.

In discussing a remedy, it is important to keep in mind the exact difficulties to be remedied, or that are capable of being remedied, which in the present case are :

1st. That many are imprisoned, before trial and after, and broken into the prison life and brought in contact with the criminal atmosphere, and thus started on the downward road, who ought not to have been imprisoned at all, and who, had they been differently treated, might have made good citizens.

2d. That the pole star of the present system seems to be *punishment*, whereas the protection of society should be its sole object, and as punishment never made a sincere convert, and as the multitude of first offenders comes from the weaker class, they should be treated rather as *wards*, whom it may be necessary to confine, but whom it is yet necessary to train and educate, if possible, into good citizens.

3d. That at present our prisons do not, as a rule, reform the prisoners, but turn them loose at the expiration of sentence, in a condition which soon returns a great per cent. of them back to prison.

4th. That the really vicious and dangerous criminals are treated like the good intentioned but weak; are at the beginning not convicted with promptness; are discharged after short terms of imprisonment when they ought not to be, and that in a condition which almost precludes their doing anything but committing crime.

Keeping the foregoing in mind, I would suggest :

First. The abolishing of the fee system, so that no petty officials will be directly interested in having arrests made for the sake of earning a few dollars of money, but let the state pay all officials a salary for discharging their duties.

The Maryland Legislature, by acts passed in 1880 and 1882, substantially abolished the *fee system* in criminal cases in so far as it related to proceedings before magistrates in the city of Baltimore, and the result was a falling off in the number of arrests in that city from upwards of twelve thousand to about seven thousand, or almost half in one year.

Second. Arrest and imprisonment before conviction should be permitted by law *only* in those instances where it is shown that the offender is a dangerous person, or that the offense with which he is charged is of such a heinous character as to require his arrest and incarceration, or placing under bonds until he can be tried.

This would reduce the incredibly large number of improper arrests by police and other officers. As heretofore shown, of the 32,800 persons arrested by the police of Chicago in 1882, over 10,000 were discharged because they

were not shown to have been guilty of any offense whatever. It would also prevent imprisonment for trifling offenses, as is now the practice. Thus, of the 7,566 committed to the Chicago House of Correction in 1882, 4,787 were simply charged with a breach of the peace, 1,171 with drunkenness, 673 with vagrancy, 169 with being inmates of disorderly houses, 222 with the violation of miscellaneous city ordinances, and 354 with violating village ordinances. The remainder of the 7,566 were charged with the following offenses: Robbery, 12; burglary, 29; horse stealing, 1; assault with intent to kill, 21; assault with intent to do bodily injury, 3; conspiracy, 1; rescuing prisoners, 1; obtaining goods under false pretenses, 1; passing counterfeit bank notes, 4; vagabondage, 4; larceny, 113. So that it will be seen that out of a total of 7,566 committed, only 190 were charged with crimes; and of these 190, the large number of 113 was charged with larceny, or petty theft, whether the thing stolen was worth fifty cents or ten dollars.

But the great majority were not criminals, and society would have been better off if it had not arrested and incarcerated them.

Deducting the 190 charged with offenses that are considered criminal, it leaves 7,376 that should have been differently dealt with. No blame is attached to the officers, for they simply carried out existing laws. But these laws should be changed. There is no doubt that in very many cases of drunkenness and disorderly conduct, if the parties were taken directly to their homes by the officers, and nothing further done for the first offense except a memorandum of the fact made by the officers for future reference in case of a repetition, it would have a better effect than arrest and incar-

ceration. And where proceedings are had, there should, except in extreme cases, be no arrest until after the trial is had and a sentence is imposed. This treatment of first offenders would have all the benefit that can be got from a scare or the terror of the law, and none of the degrading and hardening effects that produce stolidity and hatred. I refer more particularly to the young and to those charged for the first time with any offense. Hardened cases would, under the plan about to be discussed, soon be weeded out and be situated where it was at least possible for them to reform.

In this connection, the city should be divided into small police districts, with a competent man in each, who should acquaint himself with the condition of every offender and use his best efforts to induce him to quit bad associations, and also find out who the homeless are and try to have them cared for. This would be a great preventive of the small offenses which are the initiative of criminal careers. Every one knows how valuable is a little timely encouragement. This system of a public agent to look after all cases of first arrests for minor offenses, has been tried for a number of years in Massachusetts with most satisfactory results. A gentleman who once filled the position of agent, and is now at the head of one of the excellent reformatory institutions of that state, recently stated they had found it necessary to actually imprison only a little over one-fourth of those who fell into the hands of the police. In most cases they procured better homes for the young offenders, and found that they did well thereafter. In Baltimore, as I am informed, the same plan has been tried on a smaller scale, but with most gratifying results. The present neglect is

productive of crime. And in those cases that prove incorrigible, and where something must be done, and it becomes necessary to try a party for the commission of further offenses of a light character, the suit should, except in extreme cases, be begun by civil process. Then this man should either directly assist the magistrate by sitting with him, or at least should testify as to the result of his efforts in the case, giving fully the character, habits, surroundings, history, and associations of the accused, and also show whether, from all the information obtainable, there is a reasonable prospect of the offender's yet reforming and living an industrious, orderly life, if the sentence were suspended. And if the magistrate is of opinion that there is yet a reasonable prospect of reformation, sentence should be suspended and the offender let go, with the understanding that he is, to a certain extent, under the supervision of the superintendent of the district, and that he can at any time be taken into custody.

BUT FEW WOMEN WOULD BE IMPRISONED.—It is safe to say that under such a regulation very few women would ever have to be incarcerated, and the present diabolical practice of annually arresting thousands of friendless and helpless creatures for trivial offenses—in many cases for no offense at all—and locking them up like so many cattle in cells, and then fining them and sending them to the Bridewell, would cease.

If, however, the magistrate is of opinion that from all the information obtainable there is no prospect of reformation, then the offender should be sentenced *generally* to the House of Correction, not for a few days or a few months, as is now the practice, from which no good whatever comes nor can come, but simply to the House of Correction, the maximum

time of confinement there to be fixed by law and to be not less than several years, but the actual time of confinement to be determined in each case by the conduct of the offender, as hereafter explained.

The House of Correction should be conducted with some modifications upon the principle obtaining in the Reformatory at Elmira, N. Y. This institution, as a reformatory, appears to be far in advance of any institution of the kind in this country, and to be productive of the most gratifying results. The principle upon which it is conducted and upon which offenders are confined there, is in brief this: The prisoner enters for no definite time, except that the maximum time is fixed by law, and that he must stay at least one year. And while treated with firmness, he is yet treated kindly, and an effort is made to develop his self-respect; he is given to understand that it is largely for his own good that he is confined, and that the length of confinement will depend on himself; that as soon as he shows that he is able to govern himself, and that he can safely be trusted to make an honest living and live an orderly life, he will not only be given his liberty, but an effort will be made to find him employment. Then, as part of the prison duties, every prisoner has to attend a school conducted within its walls and take a regular course of instruction, while at the same time he is required to do a certain amount of work every day, so that, in fact, a great many acquire a good education and a preparation for the duties of life there, which they never would have got otherwise. Then the conduct and development of the prisoner is watched from day to day; and when the board of inspectors, who at the same time are put in possession of all the facts relating to the previous his-

tory and condition of the prisoner, are of opinion that he can maintain himself against his evil propensities or surroundings, they secure him employment, and he is sent out, as it were, on a probationary parole, they continuing for at least six months to look after him, by corresponding with his employer, and otherwise. Should he do well during this probationary period, he is dropped; if not, then they have the power to take him again into custody. So different is the treatment of prisoners in this institution from that in the ordinary prison, that such a thing as an attempt to escape is almost unknown, although the prisoners are trusted to an extent which could not be even thought of in other institutions. And in several instances where probationers were unlucky in losing their jobs, and were not able to get other work, rather than commit crimes they came back and voluntarily entered the prison until another job was secured, when they again went out and got along well.

In connection with such a system as above mentioned, the prisoner should be not only permitted, but required, to earn something for himself while in prison, over and above the actual expense of keeping him, as will be more fully explained in discussing Prison Labor.

Under this system none would be subjected to the prison influences except those whose character, vicious inclination, or confirmed habits rendered their restraint necessary for the best interests of society, and this number would be reduced to a minimum; and these, being the vicious, could be held in restraint until it was thought safe to liberate them, or until the maximum time fixed by law expired.

Third. As to the lighter offenses that are yet classed with crime, such as petty thefts, etc., the treatment, instead

of being alike in all cases, as at present, should be varied to meet each particular case; instead of being bound over to the grand jury, as now, they should be tried at once by magistrate and jury. The treatment described under the last head should, to a great extent, be followed. The superintendent should investigate the previous character, habits, condition, and associations of the offender, and the magistrate or jury should determine, in each case, first, whether the accused is guilty of the offense charged, and, second, the magistrate should determine whether sentence should be suspended as above discussed.

There is no doubt that offenses of the character now under consideration are often committed by parties who are not criminals and who, if properly treated, would never again be guilty of any offense, the simple detection alone being sufficient for all purposes of reform, while additional prison treatment would only harden and debase.

Fourth. As to those guilty of the graver offenses, and all those cases that show a deliberate criminal intent, they should be tried at once, directly upon information of the prosecuting attorney, or upon warrant sworn out by private parties, instead of being sent by the circuitous grand jury route as now. And on the trial all that can be learned about the previous condition, character, habits, etc., of the prisoner should be shown, not simply by his friends, but by the prosecution, the jury to determine whether the prisoner is guilty of the offense charged, but nothing more. In fixing sentence, the prisoner, if young and it is the first offense, should be sentenced generally to the House of Correction. If not, or if he has shown strong criminal propensities, he should be sent to the penitentiary under an indeterminate

sentence; the maximum as well as the minimum time of confinement being fixed by law. There he should be not only permitted, but required, to earn something to be carried to his credit before being again discharged, as will be hereafter explained; so that when again set free he will not be in a condition in which he can scarcely do anything except beg, starve, or steal.

CHAPTER XIV.

INDETERMINATE SENTENCES.

The idea of having the maximum length of confinement fixed by law, and then sentencing offenders *generally* and letting their actual confinement be determined by certain conditions, though comparatively new, is meeting with general approval by men who have given this subject much thought. W. D. Patterson, Superintendent of the Cleveland House of Correction, says on this point, in his report for the year 1881 :

"It is worse than folly to attempt or expect the reformation of such old-time chronic offenders as frequent our police courts every week or every month when they are out of confinement, by the infliction of such penalties as an imprisonment of five, ten, or thirty days, or by the imposition of a fine and costs. The object sought to be accomplished by such a course, however good the intention of the law, or however correct the motives of those whose duty it is to enforce the same, must end in an expensive failure, and the offenders continue in their degradation and debauchery and bestial inebriety, notwithstanding the law and the courts and the prison. Instead, as now, let them be committed as children are to the House of Refuge, or as prisoners are now committed to the New York State Reformatory at Elmira, until their reformation is accomplished. An imprisonment in such cases as the above would not only be

wise and beneficial to the offenders, but would be of especial advantage to the community financially."

In the Report of the Committee on Prisons, made in 1881, to the Legislature of California, with some reflection on prison discipline and management, the question of "Indeterminate Sentences" is thus discussed :

"By indeterminate sentences is meant that all persons in a state who are convicted of crimes or offences before a competent court shall be deemed wards of the state, and shall be committed to a Board of Guardians, until, in their judgment, they may be returned to society with ordinary safety, and in accord with their own highest welfare. If this principle be adopted, the confinement of a prisoner will depend upon his own exertions to earn promotion and eventual freedom. The duration of confinement is placed under the control, and is determined by the conduct, of the convict himself. The advantages of an Indeterminate Sentence are :

"1. It supplants the law of force by the law of love.

"2. It secures certainty of restraint and continued treatment, which operate to prevent crime, as severity does not.

"3. It makes possible the arrest and right training of that whole brood of beginners, before great depravity is reached and character is irretrievably fixed.

"4. It utilizes for reformatory ends the motive that is always the strongest—the desire to be released, the love of liberty.

"5. It removes the occasion and so mollifies the feeling of animosity usually felt towards the law and its officers, puts the personal interest of the prisoner plainly in obe-

dience to the rules of discipline, and leads him to co-operate with those laboring for his welfare."

Again, under the head of "Classifications," the report continues :

"It is self-evident that the young offender should be dis-associated from the old criminal; that the person who has committed the first offense, perhaps venial, should be separated from the hardened villain; that the comparatively innocent should not be associated with the pronounced guilty. The real classification is one based on character, conduct, and merit, as shown in the daily routine of prison life."

In the Report of the Special Commission of the State of Connecticut on Contract Convict Labor, with accompanying papers, 1880, the Reformatory at Elmira, N. Y., is thus commented upon :

"There are several peculiarities about this prison, which, so far as your committee is aware, are not found at any other in this country, and which tend largely to its success. It is strictly a reformatory, and as such is graded into three classes. No prisoner is received over thirty years of age, and all only for the first offense. Special laws have been enacted, all of which are in the interest of reform, and to enable the proposers of this experiment to give the plan a full and fair trial. The prisoners are not sentenced to a definite fixed period, but for a maximum term. Upon entering the prison they are received into the second grade, from which they are promoted to the first for good conduct, or degraded into the third for bad. * * *

* As a reformatory, the prison so far is a success. All the power of hope, love, ambition, pride and shame, is

brought to bear upon each individual; every possibility of a speedy liberation and success in the future is held up to the prisoner—of places of respect and honor in society and confidence in business, if by well doing they deserve respect and confidence; or shame, poverty, and a prison, if by a return to criminal practices they again forfeit their right to liberty. Such treatment can have but one result. Whenever, in the opinion of the Superintendent and Board of Managers, a prisoner has shown by long continued good conduct that he is fit to be trusted with liberty, he is given a leave of absence, during which time he must keep the Superintendent informed of his whereabouts and of his condition and prospects, until, after a time of trial, having proved his reformation by his conduct, he is given a full discharge. Out of twenty-four liberated on parole, twenty-two earned their discharge by showing their fitness for liberty—one was returned to prison to serve out the full length of his sentence, and one left the country. The same motives which induced these prisoners to strive for the highest grade, also induce them to do the most and best work."

The following extract is taken from the Message of Governor Hoyt to the General Assembly of Pennsylvania, January 4, 1881 :

"What can be done for the very young, up to the age of sixteen years, who, by commitments by courts and magistrates, have fallen into the hands of the law, for various offenses, has been well exemplified by the House of Refuge in Philadelphia and the Pennsylvania Reform School at Morganza. Amid some controversy over these schools, and the methods at the bottom of them, it is too late now to

question their value and service, although neither has as yet reached an equipment necessary for the best work. The purpose of their existence and the aim of their managers is to rescue their inmates from the evil associations out of which they have come and to reform them. Few of these waifs have responsible parentage or guardianship. They are quite sure to become state charges. The state, co-operating with private benefactors, proposes to return them, self-supporting, to society, under the best auspices the case will admit. Within the limits of the school they are molded, intellectually and morally, by competent, careful teachers, and instructed, trained, and drilled to some trade or industrial pursuit. The effort is to reproduce, within the enclosure, the exact condition of society they will encounter when they return to the world. This requires time, and the inmates are retained until the work is more or less completely done. The process goes upon the correct and safe assumption that it is impossible to reform the conduct of a child or man without first measurably reforming his nature. The scheme is no longer an experiment, as it has been faithfully worked out in England, France, Germany, and many of the states of our Union. This leads up to an extension of the general method, which, in the judgment of political economists of the very highest authority, promises the most beneficial results. This will include all the first offenders, except of the most brutal type, under the age say of thirty years. The purpose of the process is also to return them to society, with the preparation and discipline best fitted to enable them to earn an honest livelihood, permit them to retain their self-respect, and fit them to resume their places among their fellow-men, if they so

choose, without the brand of infamous punishment or penal servitude upon them. The aim and scope is to give the convict intellectual, moral, and industrial training, systematic habits, and definite purposes, in a reformatory school, and not in a penitentiary; to afford him another chance in life; in short, to help him to help himself.

“In the discretion of the court rendering the sentence, defendants convicted of a first offense of such magnitude as to justify adequate imprisonment, and under the age of thirty years, are committed to such an intermediate prison. They go without a determinate sentence, but cannot be held for a period longer than the maximum term fixed by law for the offense. Under a proper system of grades and classes and marks, every motive to shorten the period of detention is presented. That period will lie in the discretion of the proper officers of the institution. Positions in life are found for them, and they may then be conditionally discharged on parole, reporting from time to time thereafter their behavior and surroundings; or, in default thereof, or of good conduct for a prescribed period, they may be liable to be returned to the institution. It has been found by experience that the prisoners thus discharged have been well received again by society, and in one of the largest institutions of this kind in our land it is officially reported that less than seven per cent. of the number discharged have failed to maintain their promise of good conduct. I refer to the Reformatory at Elmira, New York. The acts creating it, and the practical management there carried out, are worthy of attention and study.”

In accordance with Governor Hoyt's recommendation, a committee, composed of members of the Senate and House

of Representatives, visited Elmira, made a thorough inspection of the practice pursued at the Reformatory, and subsequently submitted a report, unanimously advising the erection, in the State of Pennsylvania, of buildings in conformity with the principles there in operation.

A commission from the State of New Jersey also inspected the Reformatory at Elmira, and made a like recommendation to the legislature of that commonwealth.

The "Tenth Annual Report of the Commissioners of Prisons of Massachusetts," January, 1881, devotes considerable space to the consideration of "Indeterminate Sentences," in the following language:

"Whatever plan may be adopted to afford the best opportunities for accomplishing the reformation of criminals, the highest results can never be attained while the present system of imposing definite sentences for crime is in force. This was long ago recognized as true in the treatment of young offenders; and for many years children have been sentenced to the reform schools for their minority, no time-sentences being imposed, the power to release them when they are deemed to be reformed being given to the authorities in charge of the schools.

"There are many reasons for applying the same principle in the treatment of adult criminals. The present system holds out no inducement to the convict to reform. His sentence is a fixed one, and expires on a day certain, regardless of his conduct or of his character. The one thing he keeps more constantly in mind than any other is the day of his release. He knows that this will not be much delayed by anything he may do, and cannot be materially hastened by good behavior or by any change

of character. He learns to look upon his punishment as wholly retributive; and, when he comes out of the prison, he feels that he has 'wiped out' the record against him, and is to begin again. During his trial, his main effort, and that of his counsel, is to secure as light a sentence as is possible; and often, with no conception of the gravity of his offense, he harbors a spite against the government for punishing him too severely.

"It may be necessary to continue for the present this system for most offenders, as a change from fixed sentences to indefinite ones involves a change in the whole system of prison management and discipline. But for an institution whose first aim is the reformation of criminals, indefinite sentences must eventually prevail. Under such a system, a convict would be confined until he was deemed to be reformed, be it a short or long time. This throws around the prisoner every possible inducement for self-improvement. He realizes that his future is in his own hands. He sees that the State is not punishing him arbitrarily for his crimes, but is interested in his welfare; that he is deprived of his liberty not so much on account of his *acts* as on account of his *character*; and that his right to freedom is dependent upon his reformation, which in turn depends upon his own use of his opportunities.

"With such a view of his offenses, of the results they have brought, and of the way of obtaining his liberty, he has every inducement to do his best. Some, with their future thus in their own hands, will speedily change their habit of life, and make resolute endeavors to build up better characters, and can soon be released. Others will come to such endeavors very slowly, and some, possibly,

not at all. Some of those who begin the struggle will fail: but, as a rule, they will try again and again, until they attain some degree of success.

"In determining when a convict has reformed, a great responsibility rests upon those who have his training in charge. They will sometimes be deceived; and sometimes one who had within the prison really reformed, will fall under temptations in a life of freedom, and return to a criminal life. But this is equally true of other wards of the state. A large percentage of those discharged from our asylums for the insane, as cured, return again for treatment; the physicians having been mistaken in regard to the cure, or having over-estimated its permanency when the patient came in contact with the world. But these mistakes would not lead any one to suggest a fixed term of confinement for the insane, with a discharge at its end, regardless of the condition of the person.

"If an indefinite sentence, to be ended only by his own reformation, be deemed too severe, the indeterminate sentence now imposed in New York upon those who are sent to the State Reformatory at Elmira, ought certainly to be tried. A convict is there sentenced to the reformatory for the longest period for which he could possibly be sentenced for his offense. For instance, under our criminal code, a person may be sentenced to the state prison for five years for larceny from the person, or he may be sent to jail for a lesser term. Under the New York statute, a person sent to the reformatory for this offense would merely be sentenced to that institution, and regardless of the amount stolen, or of the circumstances, he could be held for five years, unless sooner reformed. In the reformatory he is

subjected to the closest surveillance and the most careful training. He wins his release by his deportment and by his character. Whenever he is thought to be reformed, he may be released upon parole. He continues under the control of the Board of Managers until the expiration of the five years, unless they sooner discharge him, precisely as minors released from the reform schools in this state do. He may be returned to the reformatory for misbehavior at any time during his sentence.

"It will be seen that this plan holds out to the convict the strongest possible inducements for reformation, both in confinement and after release. If anything in the way of legislation will secure a change of life, this will; for it takes advantage of every motive which usually moves a rational being, and makes full use of the means which are most likely to change a criminal into a good citizen. The system has produced excellent results in the Elmira reformatory; and we recommend that it be adopted in sentences to the reformatory prison for women, and to the reformatory for men, which we have suggested, if it shall be thought wise to send a part of the prisoners to it directly from the courts, instead of transferring them from the county prisons."

In the Report of the Joint Committee of the Senate and Assembly, appointed to investigate the affairs of the New York State Reformatory, submitted April 27, 1881, to the questions, "Is the Reformatory doing the work for which it was intended? Is it reforming young men? Is it a success?" the following reply was presented:

"We take pleasure in commending the management for the excellent condition in which the buildings and grounds are being maintained; and for the skill, thoroughness and

efficiency with which the work of reforming and reclaiming the inmates is being carried on. The prisoners are all young men, between sixteen and thirty years of age when sentenced and convicted of their first offense. The prison was suggested, planned, and is erected and operated, with a view to the reformation of this class of offenders. We are convinced that its object is being attained to a greater degree than its best friends anticipated. The structure has cost nearly or quite a million and a half of dollars, but the state has something to show for its money. The buildings are large and substantial, well lighted and ventilated, and models of cleanliness and good order. The 500 cells are of good size and comfortable, each being furnished with a bed, a chair, a small cupboard or bookcase, and a crude writing-desk; and each is lighted with gas. The food supplied to prisoners appears to be plentiful and wholesome, and the clothing is all that is required. Books and writing materials are supplied as needed. In the arrangement of the buildings, as well as in the management of the prison, everything compatible with reformatory discipline seems to have been done with a view to the comfort of those who are so unfortunate as to be incarcerated within its walls. The prisoners are kept hard at work throughout the day, and attend school during three alternate evenings of each week, the intervening evenings being occupied in study. It was the privilege of the committee to attend the schools, which we found in the hands of competent instructors. The work bore every evidence of substance and thoroughness, while the advanced studies taught, and the brightness and proficiency of the pupils, quite surprised us.

“As is well known to the legislature, if not to the people, the inmates of the Reformatory are sentenced to the institution for an indefinite period of time, the law only providing that they shall not be imprisoned for a longer period than already authorized by law in a state prison or penitentiary for a like offense. Aside from this provision, the time of their imprisonment depends upon their industry, good conduct, and proficiency in studies. They are made to understand that they can regain a place in society by deserving it. The pride, self-respect, and ambition of the inmates is encouraged and stimulated by a system of marks most skillfully arranged, which results in classifying them into different grades, thus entitling them as they advance to enlarged privileges, greater confidence, and better and more attractive clothing, and, finally, to release upon parole. *The committee were struck with the frankness, cheerfulness, and manly conduct of the inmates, and the entire absence of that sullen and dogged indifference and abandonment so universal in prison life.*”

“In general, we have none but words of commendation for the *reformatory* work of the State Reformatory. The experiment is being proved a success. Young men who have fallen into bad ways are being saved to homes, friends, and society, instead of being crushed in spirit and prepared for deeper shame and greater crimes. The principle upon which the reformatory is conducted should, in our judgment, be persevered in, developed, and extended into the other penal institutions of the state.”

In 1881, Mr. Langmuir, Inspector of Prisons in Canada, in company with a number of Canadian officials, visited the prisons in several of the states of the Union. and on his

return, in an interview published in the *Toronto Globe*, gave his opinion of the system in vogue at Elmira, as follows :

“Q. Did you see any new methods which might be introduced here in whole or in part ?

“A. Yes, we did. At the New York State Reformatory for adult males, at Elmira, I found certain features of prison management decidedly in advance of our views. The system has been in operation five years. The building is a fine one, and is furnished throughout with all the modern conveniences of prisons. Instead of the prisoners being associated together as they are, without regard to the differences in their character and conduct, there are four large dormitories which provide sleeping room for four different classes of prisoners. The distinction made is not on account of the offense for which they were committed, or the length of the term of imprisonment to which they are liable. There are three grades, and entrance to the higher of these depends entirely on the conduct of the prisoner while in prison. Offenders sent to this prison are not sentenced for definite periods, as with us. The state law provides a maximum period of confinement for the different classes of crimes, and no minimum. This applies only to the Elmira prison. What the real duration of the sentence shall be, depends on the prisoner. All enter in the same grade, and their conduct is observed carefully from the very first, and marks of merit and demerit are given. By good conduct a prisoner may earn promotion to the first grade, which has certain privileges attaching to it. Here good conduct still further promotes the interests of the prisoner, and if the signs of reformation which led to his promotion from the second grade are still manifest, the superintendent

and prison managers may release him on a probation, which generally lasts six months. The friends of the prisoner are corresponded with, and their wishes consulted. Arrangements are also made with farmers and others in a part of the state where the prisoner is not known, and there he is sent to earn his living. Great care is exercised in securing respectable employers, who of course are confidentially informed of all the antecedents of the prisoner. The employer makes a report at the end of the time, on the probationer's conduct and sincerity in his efforts for reformation. The prisoner also reports every month. A comparison is made between these reports, and the superintendent and board of managers may then decide on an unconditional discharge. In this way a prisoner is encouraged to reform, by the prospect of shortening his term of prison life, which may in some cases last ten years, to five or six years, or even to two or three. Good conduct ensures confidence and promotion. Some of the prisoners are even employed as monitors, and some are entrusted with the keys to various apartments. * * I never saw a prison in which the inmates had less of a convict expression. They were cheerful, and wore an expression of openness and candor I have never seen in any other penal institution. The great encouragement given to right conduct has a very salutary effect, both in securing good conduct and encouraging good habits and desires. A prisoner told me that he could scarcely sleep at night, thinking what he could do the next day to merit a good mark. There are other excellent features associated with the system. The superintendent, instead of addressing the prisoners as a mass, must become personally familiar with the disposition and conduct of each

man. He is brought into contact with each, and this contact has the effect of individualizing the prisoner. Of course, no pains are spared to make each man, while retaining his manliness, submit his will to subordination." I have cited at length from the reports relating to the Elmira Reformatory—not for the purpose of praising it, however excellent it may be—but to show the opinion our leading public men, who have examined the subject, entertain in regard to indeterminate sentences.

Sir Frederick Hill, who obtained great reputation in the successful management of Scottish prisons, said that the chief reliance of a prisoner is on hope. "This," he says, "secures the hearty co-operation of the prisoners, without which there can be little expectation of real reform. I set a high value on the arrangement in convict prisons by which it is granted to a prisoner, by great self-control, industry, and exertion for moral improvement, to materially abridge the length of his confinement."

Dr. Despine, an eminent physician and philosopher of France, made a profound study of the criminal from the stand-point of psychology, and, after showing that criminals are, as a rule, morally weak and in an abnormal state, says :

"If these men who are the subjects of a real moral idiocy are dangerous, they are at the same time deserving of our pity. To shield ourselves from danger we have to separate them from society. This is in itself a punishment. But the treatment which aims only to punish, is dangerous both to society and the criminal. It rarely improves the latter, but often makes him worse. In France it produces from forty to forty-five per cent. of repeaters. This is because, having

taken as our guides only fear and vengeance, and not scientific data, we have never studied the moral state which leads a man to crime; we have ignored this abnormal condition. If the criminal is different in a moral point from other men, the best way to prevent crime is to cause this difference to cease—not wholly, which is impossible, but near enough to render him a safe member of society. In this view, it is the first duty to segregate them, not, however, for a fixed period determined in advance by the nature of the crime committed. It is rather the moral state of the criminal that is to be taken into account.

"Here we have the first point in reference to the treatment of criminals, that of the time of sequestration established by science, which is thoroughly in accord with what is demanded by common-sense. Under the system which fixes the time in advance, we see daily set loose in society a multitude of malefactors who are known to be dangerous. Does not such a mode of action wear absurdity on its face ?

"In taking as a starting-point the principle that we have here to deal with persons afflicted with a moral anomaly in the nature of a disease, it is evident that to cure, or at least lessen, this malady, should be the supreme aim in their treatment. It is to this end that all the means employed ought to converge. Further, as the moral anomaly with which criminals are attacked varies almost indefinitely, it is as irrational to treat all these varieties in the same manner as it would be to treat all the ailments of the body alike."

To what is above said about indeterminate sentences, I will add that in my opinion the convict should be required to earn some money for himself, as hereafter explained,

before he is permitted to leave the prison, so that he will not be absolutely dependent should he fail in either getting or keeping work.

For, granting that he has completely reformed and is anxious to lead an honorable life, he is then still no better, nor can he possibly be morally stronger, than the honest man who never was in prison ; and even such a man would be in great danger of becoming a criminal should he suddenly be left without money, without work, without friends, with nothing to eat, and nowhere to go when night came.

So long as a man is able to pay his way, he preserves his self-respect and is comparatively free from danger.

CHAPTER XV.

GRAND JURIES.

Grand juries should be abolished. They work a great injury to the innocent, and greatly assist the guilty. For the delays incident to the action of the grand jury keep hundreds in jail, who are, on examination, discharged. At the same time, the great delay incidental to their action is of the greatest advantage to the real criminals. They thus gain time, frequently many months, till the public has lost interest in their case and further delays have become easy to procure.

At present, there is an examination before a justice of the peace, where a number of continuances are generally obtained. Then the offender is bound over to await the action of the grand jury, and, if he can not give bail, he has to go to jail ; and the worst criminals often are able to give bail, while the poor, wrongfully arrested, frequently are not. Owing to the number of cases, trifling and otherwise, requiring their action, it frequently takes a number of months before the grand jury reaches the case. Then the prosecution is required again to produce all its witnesses. If an indictment is found, then it again takes months before it can be reached for trial, when the whole agony has once more to be gone through with. Surely, no system better calculated to defend criminals and injure the innocent could well be devised.

Courts should always be open for the trials of criminals, so that a continuance would be but for a few days, and not for a number of months to the next term, as now. Then they should be tried on information, so that a trial could take place immediately after the offense. This would protect the innocent and at once bring to justice the guilty. The speedy trial is what the guilty always dread.

PART SECOND.

PRISON LABOR.

CHAPTER I.

PRISON LABOR — KIND OF WORK DONE — EARNINGS AND COST OF PRISONERS — LOSS TO SOCIETY — INNOCENT SUFFER WITH GUILTY — REASON OF LOW AVERAGE — NO INTEREST IN LABOR MAKES POOR WORKMEN — LEAVES HIM IN HELPLESS CONDITION — INDUSTRIES LIMITED.

There are four methods in vogue of working prisoners: First, by the state furnishing the material, and then selling the goods made; this is called the "Public Account System." Second, hiring out or contracting the services of a specified number of convicts to one contractor for a fixed time and at a fixed price per day, the money thus made going to the state—the state keeping control of the prisoners, feeding and clothing them; this is known as the contract system. Third, the "Piece Price System," whereby outsiders furnish the material, and often some of the machines, and the state manufactures the desired articles at a fixed price per piece. These three systems are in vogue in the Northern States, except Delaware, where the prisoners do not work.

The fourth method is to lease out the convicts, the state giving the prisoners thereafter scarcely any attention, and

the lessee feeding and clothing them. This system prevails in many of the Southern States, and is by far the most objectionable of all. Under it, there is scarcely a possibility of the reformation of a prisoner. The lessee wants to make as much money, and give as little in return, as possible; and, in some cases, the condition of the prisoners is said to be far worse than that of the most cruelly treated slaves.

Kind of Work Done.

The work done in prisons varies. In the Northern States it is generally confined to manufacturing; the making of boots, shoes, and chairs being carried on to a greater extent than the making of any other article, though a great many prisoners work at stone-cutting. In some of the Southern States mines are worked and plantations managed by prisoners.

Earnings and Cost of Prisoners.

The average earnings of prisoners in the best managed state prisons is 50 cents per day for every man engaged in what might be called productive labor, skilled and unskilled. The average for all, including those who do prison duties, is about 35 cents per day per man. Thus, in the Penitentiary at Joliet, Illinois, which, in this respect, is one of the best managed in the country, the average contract price per man per day, for year ending September 30, 1881, was $46\frac{83}{100}$ cents, and for year ending September 30, 1882, was $52\frac{52}{100}$ cents; and the average earnings, including working days, Sundays and holidays, was $33\frac{91}{100}$ cents and $39\frac{42}{100}$ cents, during said years. It will strike any one at a glance that this is an exceedingly low average; that it is less than half what a man

should earn, and less than half what a free laborer will earn on an average.

But notwithstanding this, many prisons in which the inmates labor, are self-sustaining; some require appropriations by the state, while some actually have a surplus; the total average cost of keeping (including guarding, clothing, etc.) each convict in the various penitentiaries being from 28 to 35 cents per day.

Loss to Society.

It will be seen by the above that in the case of every convict there is an actual dead loss to society of over half of his productive powers. That is, over half of his ability to support not himself simply, but others, is absolutely lost. His time is passing, he has so many less months or years to live. But he is contributing less than half of what he should contribute as a free man.

Society is so constituted that it requires every able-bodied man to contribute a proportionate share toward the support of the whole. This he usually does in supporting his family or those depending on him. And whenever, from any cause, he fails to do this, there is a loss to society, and the burden of the remainder is proportionately increased. This increased burden is felt in various ways, and is just as real as though the whole of the loss had to be collected in increased taxes every year. In fact, to a certain extent it is, for as the number of those paying taxes is diminished, the burden of the remainder increases, and what is paid directly and indirectly for charitable purposes, to feed and clothe those who are dependent for support on those confined in prison, might as well be paid in the shape of taxes. Further, in so far as

those dependent on a convict are more poorly cared for, though not actually objects of charity, they become poorer citizens, and are more likely to be a bill of expense than a source of assistance to society in the future. Even in the case of the convict who has absolutely no one depending on him, society sustains this dead loss, for his time is lost, his best days are passing, he is accumulating nothing, he is not equipping himself for the struggle of life that is before him; he can not, therefore, after he becomes free, accomplish what he otherwise might have done—nay, the chances are all against him, and his life is liable to be a failure, so that society will lose not only his assistance, but will actually find in him, at some time in the future, a burden.

Innocent Suffer with Guilty.

Under the present system, the innocent are punished with the guilty. The law intends that its penalties shall fall only on those who actually violate it; but at present in many cases the consequences of a conviction fall with equal severity upon the innocent and dependent, for it in effect takes away their bread. When, therefore, a man is convicted, those dependent on him are at once left without support, besides having to bear the terrible social blight which settles upon families of convicts, isolating them from the rest of mankind and making them objects of aversion, for which it is hard to suggest a remedy, and which can not well be avoided. But to be deprived of the means which to procure the necessaries of life is an uncalled-for hardship; for the man is not dead, his strength is not destroyed, he is as able to work as ever, and in very many cases would gladly work harder than ever before, if thereby

he could do anything for those he leaves behind. And why should he not be permitted to do so—nay, why should he not be actually required to do so? He has violated the law, it is true, but his family have not; he ought to be punished, but they ought not to be. While, therefore, he must be deprived of his liberty, must be isolated from society, and bear the hardships of prison life, he should still be not only permitted but required to contribute to the support of those who are absolutely dependent on him. True, the state may require that he first work enough for it, to pay the expense of feeding, clothing, guarding, and superintending him; but this in most penitentiaries is only from 28 to 32 cents a day, while he is capable of earning, perhaps, three times as much. Upon this subject, W. Searles, chaplain of the Penitentiary at Auburn, N. Y., in his report, says:

“An agreeable and profitable intercourse with the inmates of the prison, which I enjoy, arises out of their social correspondence, which it falls to my lot to conduct. The prisoners are permitted to visit my office during the week to obtain permission to write, or for advice, or to transact such necessary business or ask for such favors as rules will permit. I read, record, and direct all letters that go out, and also read all that come in. This opens up my way to their most tender and susceptible moral feelings and family sympathies. The letters received by the prisoners from their almost broken-hearted wives, mothers, sisters, and friends, enjoining upon them repentance, reformation, and obedience to the prison rules, that they may the sooner be reunited, must have a great influence upon them, both for their present and future good. And, sir, it is the perusal of these letters from the poor old mother, the broken-hearted

wife, the suffering children, the grieving brothers and sisters, that enforces upon my mind the lesson that no man liveth to himself alone. In the vast majority of cases, these mothers, wives and children are poor, and were dependent upon the son, the husband and the father for the actual necessities of life. In consequence of his imprisonment *they* must suffer. While it is the duty of society to protect itself against the inroads of the criminals, let me inquire, is it not equally the duty of society to protect from want and suffering the innocent wife and child? As I have heretofore suggested, permit me again to express the hope that the incoming legislature will make some provision by which *a portion, however small, of the convict's earnings, may be set apart for his own or his family's benefit.*"

This system, therefore, works a great injustice to the innocent, and in the long run entails a heavy burden on society; for where the family of a convict is left without support, the burden of providing falls directly on society. It is immaterial whether this burden be discharged in taxes or charity, or in the loss of goods stolen; it still comes from the public.

Further than this, the children of a convict thus situated, having no regular source to look to for bread, are liable to grow up violators of the law, from the sheer force of their surroundings; for squalor and misery are hot-beds of crime.

So that, instead of extirpating crime by the punishment inflicted, we create anew the conditions out of which it grows—that is, we constantly create the conditions that will be certain in due time to bring forth new criminals, with all the expense to the public that is incident to arresting, prosecuting and confining law-breakers. In fact, it would be

much cheaper for the public, and certainly much better, to even charge the convict nothing for guarding, superintending, feeding, and clothing him, than to pursue the system now pursued; for the results just described will in the end cost the public much more than thirty cents per day. But as already stated, if given an opportunity he could pay the state and contribute toward the support of his family besides; and as thirty cents per day is as little as he could be clothed and fed for at home, he could in reality pay the state for his keeping and contribute almost as much to the support of his family as if he were free. In fact, in many cases he could be required to contribute a great deal more than he would if free. But I shall consider this subject hereafter.

Reason of Low Average.

The chief cause of the low average earnings of convicts lies in the fact that it is unwilling labor. A man while free will earn more than double what he will earn as a convict.

Of course much depends on the skill of the foreman in managing the prisoners and getting much work out of them. But the chief reason of a low average is apparent.

No Interest in Labor Makes Poor Workmen.

The convict has no interest whatever in his work. It does him no good to do a large amount of work in a day, for it will benefit neither him nor any one dear to him. Men are generally impelled to work by a desire to benefit themselves or those dependent upon or dear to them. But the convict has none of these incentives. He may be anxious to earn and save a pittance, so that when he again

regains his freedom he will be able to support himself for a time even though he fail to get work. Or he may be eager to earn something for the assistance of those who are without bread because of his acts and absence; but all in vain. If he does more work than he is required to do, the profits go generally into the pockets of wealthy contractors, while he is simply wearing himself out. In short, he has no heart in his work. It is involuntary servitude, which rarely accomplishes more than half what voluntary service will.

At present, the convict's work is to him a treadmill affair, from which he is to get no benefit. He goes to his task because forced to; works only while forced to; studies to slight his work rather than do it well; tries to get along by doing as little as possible. Indeed, how could it be otherwise? for outside of prisons men study to do as little as possible of that in which they feel no interest and which they are to get no benefit from, and surely we can not expect to find more virtue inside of prisons than out.

The effect is, therefore, to make a man a slow workman, and in many cases an indifferent and careless one; and in time these habits will become natural, especially where they are continued long. So that, instead of becoming an expert and skilled workman, he is more apt to become a slow botch, and is therefore not well equipped to make an honest living when he again regains his liberty. And if the effect of his confinement has been to make him a poor workman instead of an expert, the chances are against his being able to get along, and the probability is increased of his drifting, with his family, among the criminal classes. And few have any conception of the expense entailed on the public by the relapse of a convict, especially when the depredations com-

mitted before he is again incarcerated are included. In 1872, Mr. Tallack, at the request of the Howard Association and of the Central Committee of the International Prison Congress, collected a vast amount of information on the subject of prison management, prison labor, and the reformation of prisoners; and on this point he says: "Prisoners, if discharged untaught and untrained, soon relapse, and cost the public £159 per annum (nearly \$800), at a low estimate, by their robberies.

Leaves Him in Helpless Condition.

But by far the most serious defect in the present system lies in the fact that when a man has spent years in prison, on again going out into the world he is absolutely dependent; he has no money, and generally no friends who will help him; he may be anxious to work and earn an honest living, but often can not get work. Now what is to be expected in such a case—bearing in mind that in the first instance he succumbed to evil influences and violated the law, and that a man not a convict and with friends, but who has nothing to rely on but his labor, has a very hard lot of it? I ask what can with reason be expected now? He is under a ban. He is an outcast. Everybody's door is shut against him. He may be full of good resolves, but he can not live on them. He may again long to be respectable and independent; but he must be housed, fed, clothed, and if work is not to be had, what can he do?

Florien J. Ries, one of the most successful prison managers, in his report of the Milwaukee House of Correction for 1880, in speaking of this subject, says:

"Many doubtless leave the prison with a strong determi-

nation to lead honorable lives in the future; but here the question arises, how will they accomplish this? With all boasted philanthropy and all pretended kindly feeling towards these persons, how are they met by society when they leave the prison door behind them? As long as people *demand* that prisons must be self-sustaining, these persons will receive but a pittance upon their discharge. With this they venture out upon the world, seeking employment; and if they are frank, and admit that they have just been discharged from prison, who will employ them? Without employment, without money, without friends, what are they to do? Is it not perfectly natural under these circumstances that they should seek and find their former associates in crime? Here, then, is a wide field for humanitarians, a field in which perhaps the practical reformation of many of these persons could be accomplished. What can the prison officials accomplish by assuring those prisoners that if they will only show the good-will to reform, society will receive them and forgive past transgressions, when after their actual discharge there is no one to extend a helping hand? I believe that a 'Prisoners' Aid Society' could do an incalculable amount of good in the way of advising and assisting such persons. This is a subject which should receive the earnest consideration not only of our legislature but of all true humanitarians."

The following forcible remarks are from the report of William H. Hill, moral instructor of the California State Prison. In enumerating the conditions necessary for the reformation of prisoners, he says :

"*Second*—The prisoners must desire and determine to reform.

"*Third*—The officers in charge should help in the work of reformation.

"*Fourth*—Christians and philanthropists in the world outside should also help, and not by cold looks and colder actions drive the discharged prisoners again into crime.

"As to the second element, there is a great misapprehension on the part of the people generally. It seems to be taken for granted that all who are here deserve their punishment, and should be kept from further harm by indefinite imprisonment. This is a great mistake. Some of the inmates here are undoubtedly innocent, having been the victims of perjury or mistaken identity. These may be few in number. The great majority of the prisoners, however, are here for the first time—at least three-fourths of the whole number. A mistaken impression is abroad as to this. It is not true, as often asserted and believed, that a large, or even any, majority return for the second, third, or fourth time. Not one-fourth do so. This would seem to be proof positive that the majority not only resolved to lead a different life after release, but carried their intention into practice. And facts are always more conclusive than fiction.

"As to the third requisite, I can bear testimony that the officers do their duty, and wish to help the prisoners to do well, not only in the prison, but out. And if their efforts were as earnestly seconded by outsiders, there would be little necessity to ask any of the above-named questions. And right here is met the greatest obstacle in the way of reform of prisoners; for I must answer the question involved in the fourth position, by saying that Christians and philanthropists outside, though plentiful in lip service, do not help the

prisoners to reform, but passively, if not directly, lend their influence to drive them back to crime and punishment. This is a bold charge, I know; but unfortunately it is true. No matter how well an inmate may conduct himself while in prison, nor how sincere he may be in his efforts and determination to reform and lead a better life, he goes out with the prison taint upon him. He applies for work, and honestly tells where he has been. With very few exceptions, he is immediately rebuffed. In vain does he plead his reformation and determination, and show his certificate of good conduct from the prison officers. 'I pray thee, have me excused,' is what he hears on every side. Tempters to crime are neither scarce nor fastidious; and thus repulsed by those who claim, morally, to be the better class, it is not strange if he is again drawn aside from the right path, and returns here more hardened than ever, on account of his repulse by those from whom he had a right to expect better things. That is one obstacle in the way of his reform.

"But suppose, to avoid this, he simply conceals the fact that he has been an inmate of the state prison. He secures work as a mechanic, or clerk, or laborer, and is honest, industrious, and faithful. A short time only elapses before he is 'spotted' by some depraved ex-convict, and 'blackmail' is demanded on threat of exposure. If he resists the claim, and is still trusted, notwithstanding the exposure made as threatened, it is well. But how often is that likely to be the case? Not one time in twenty, I am sorry to say. If he submits to the demand of the ex-convict, then he is at his mercy, and will be driven to desperation, if not to suicide, by further and still more exacting demands. Nor is this the other side of the picture. Can he escape Scylla and not fall into Charybdis?

"And I am sorry to say there are some — not all — of the police in San Francisco and other large cities, who seem to take a delight in pointing out these poor unfortunates as 'state prison birds,' and thus drive them from honest work into crime. What wonder, then, that the percentage of real and permanent reform is not as large as could be desired? I feel like saying to these outside fault-finding philanthropists, 'physicians, heal yourselves,' ere throwing upon the prison officers or directors the blame of failure in efforts to reform. Let outsiders do their duty as men and Christians, and I believe that nearly all of those sent here for the first time would reform and lead honest, if not true, godly, Christian lives, when restored to liberty. I hope to live to see the day when this shall be the actual fact, and not merely a picture of the imagination."

Upon the same subject, W. C. Gunn, chaplain and teacher of the Iowa State Prison, who has interested himself greatly in the welfare of discharged convicts, says, in his report:

"What becomes of the discharged convicts, is a question that is frequently asked. That depends very much upon how they are treated after they are discharged. And here let me emphasize what I said two years ago. Perhaps none, unless connected with a prison, and but few even of those, have the remotest idea of the difficulties which a discharged convict, without friends, has to meet before he obtains employment. Many, when liberated, do not wish to return to the place from which they were sent; why, I know not, unless, realizing their disgrace, they are unwilling to go back where it is known. Many have no friends or relatives, and, as a rule, not only prefer to go, but do go, where they are unknown. The stigma of the penitentiary resting upon

them, the strength of public opinion against them, and nearly penniless, they are almost compelled to do one of three things; beg, starve, or steal; and, alas for the weakness of good resolutions, the latter at times is resorted to. What are discipline and teaching and reformation in prison, unless society sustains the effort outside of the prison? Can not society afford to try the discharged convict once more? I know that the cloud of the penitentiary hangs heavily over him. But what if it does? Should not Christian men, philanthropic men, and especially neighbors, do what they can to save the erring? Let the following letter, received from one of the 'unfortunates,' tell, and it is only one out of several in my possession:

"M——, IOWA, January 28, 1881.

"REV. GUNN, DEAR CHAPLAIN:—I am encouraged to address you by the remembrance of the kind and undeserved interest you manifested in my welfare during my stay in Ft. Madison. I have been at home now five months, and I am beginning to experience the difficulties which attend a man in his efforts to regain the position he held in the estimation of his fellows before departing from the path of rectitude. My professions of intent to lead a life of honesty are distrusted, and I am tempted to relinquish any other life than that almost forced upon me by my treatment at the hands of my neighbors. Your appreciated efforts to reclaim the fallen emboldens me to turn to you for advice and encouragement, etc.'

"While that unfortunate man was in the penitentiary he was bolted *in*; now that he is on the outside world he is bolted out—bolted out from the sympathy and confidence of his neighbors, bolted out from the workshop, bolted out

from farm labor. I therefore most heartily recommend that a State Prison Aid Association be organized, with a branch in every county, and that persons with large sympathy and warm hearts be encouraged to assist in this noble enterprise, thus procuring for all who desire to reform places to work, where they can earn an honest living, by this means shielding them from idleness and from the merciless attacks of unkind and evil disposed persons.

"Kindness oftentimes may be scarce towards a discharged convict, but it is not wholly dead. There are some who are not afraid to take them by the hand and succor them in time of need. During the three years and one month of my chaplaincy, I have found good homes for three hundred and five out of the six hundred and forty-six discharged. Only *two* of these were discharged by their employers on account of dissatisfaction—one in Des Moines county for not earning his wages, and the other in Marshall county for smoking too frequently. Both have done well since. But what became of three hundred and forty-one for whom no homes were found? As far as I am able to learn, thirty-nine of them are in the penitentiary, seven are living by gambling, and two are 'fugitives from justice.'"

The prisoners' aid societies mentioned above, which have in late years been formed by kind-hearted and philanthropic people, are doing a great good, but they are after all in the nature of a palliative and not of a cure.

Industries Limited.

Keeping all prisoners entirely within prison walls, as is now done, greatly limits the industries which they can pursue, and the result is, that too many are forced to take up

particular trades which they would not have taken up as free men, and this is a direct injury to the honest free laborers who, with their families, are dependent for their living upon that particular trade. These laborers have no right to complain of men working at a particular trade in prison, provided it appears that the parties working at such trade in prison would have worked at it had they never been imprisoned, and provided further, that the effects of this prison labor do not reduce their wages any more than they would have been reduced had the prisoners remained free men and followed the same trade that they do in prison. For every one has a right to follow any trade he wishes to. A free laborer can not object to other men choosing whatever trades they prefer. A fair competition between parties similarly situated is not objected to, but the overcrowding of certain trades by purely arbitrary and unnatural means is doing an injustice to those who have voluntarily selected those trades as a means of livelihood.

If the prisoners could be divided, and those having long sentences to serve, or who are guilty of heinous crimes, be kept within prison walls and divided among such trades as can well be carried on there, the number assigned to each would be small, and probably not in excess of the number that would have selected the same trades as free men. And if a system were adopted whereby the temptation to escape would be greatly reduced, then the remainder of the prisoners could be taken out to labor at such work as they would to a great extent have chosen had they labored as free men. By this means, prison labor could be assigned to many more branches of industry than is possible at present. Besides, the moral effect would,

under proper regulations, be much better. As it is, a great number of men are set at the same kind of work, without regard to their adaptation for it. Instead, therefore, of learning trades or occupations that they could follow when again free, they find upon regaining their freedom that they have in fact no occupation at all, as the work at which they have been engaged was not the kind for which they were adapted or which they could successfully follow.

Further. The objections to convict labor now so strenuously urged in so many quarters could be removed without increasing the burdens of the public. It will be noted that the objection is more to the method of conducting the convict labor, and of bringing it in competition with free labor, than to the working of convicts at all. In fact, no objection could be urged against this, for every man has a right to pursue some kind of labor. Nay, it is his duty to do so. When, therefore, convicts work in prisons, they are doing no more than they would have done, or at least should have done, as good citizens.

But, besides the forcing of large numbers of men to perform a particular kind of labor which they otherwise would not have performed, the objection to convict labor, as now managed in most prisons, is that it is contracted out at such figures that the honest free laborers are reduced to starvation in the necessary competition which ensues; or, in case the convicts work under the public account system, that their products are sold cheaper than the same kind of goods can be made by free labor at living wages.

That goods manufactured on public account for the state are sold at lower prices than the like goods manufactured by free labor, is, I believe, not generally true, and certainly

ought not to be permitted, for the state ought not to enter into competition with its own citizens. But that convicts are contracted out in great numbers, at average prices (40 to 55 cents per day) that appear on their face to be ruinous to free labor, is true.

At present there is much ground for complaint, especially as regards certain kinds of skilled labor that can be carried on in a prison as well as elsewhere. Thus, there is no doubt that the making of shoes, saddlery, cigars, and a number of other articles requiring skilled labor, by convicts under the contract system, at present injuriously affects the free laborers in these branches of industry; and it affects them the worst in dull times, for in good times, when the demand is equal to the production of the entire country, all find employment, and that the contractor of prison labor is making excessive profits is not generally noticed. But when times are dull and the demand limited and prices low, then, inasmuch as the product of the convict labor must continue to be the same—as the contracts usually run for a term of years—free labor has to suffer; for, should the demand be no greater than can be supplied by the prisons, then free labor would either have to seek other employment or accept such wages as would enable it to compete with convict labor. Of course wages would still be greater than the convict's wages, for, being much more productive, free labor would of course command higher wages; but still they would be lower for the prison competition. On the other hand, the prison contractor also finds his profits reduced in dull times, for he pays the same wages as when times were good, and must pay these right along whether he can sell his products or not.

Now if a system were introduced by which convicts could be converted into voluntary laborers and paid something near the wages paid voluntary laborers, convict labor would never undersell free labor, and the prisoners could be set at labor for which they are adapted, and thus the overcrowding of certain branches of industry by convicts could be avoided. True, it may be said that by changing involuntary into voluntary labor, the products would be greater than at present, and must still more affect prices. But the answer is, that there are no more men at work than would be, or at least should be, at work if there were no convicts at all; and as their labor would not undersell free labor, there could be no moral ground of objection. And further, the real trouble now with convict labor is, not that all industry is affected by it, but that a few branches of industry are overstocked by it.

CHAPTER II.

REMEDY.

If the practice recommended in chapter thirteen of Part First, page sixty-eight, were adopted, it is safe to say that after a short period, in which the more hardened characters would be weeded out, the annual commitments to prison would be diminished by more than half, and the prison labor question would thus be solved to that extent. Then if those in prison were permitted to earn something daily for themselves, so as to give them an interest in their work and thus remove the temptation from all except those confined for long terms, to desert, most of the prisoners could be set at work outside of prison walls, so that comparatively few would be crowded into the trades where they come into competition with skilled labor, who would not otherwise have pursued the same calling. It is safe to say that there would soon be no question of prison labor to agitate the public.

The idea of working prisoners outside of prison walls is not new. It has been tried successfully even under existing laws which, by depriving the prisoner of almost all hope, may be said to encourage desertion. But unfortunately the only states where this plan has thus far been tried, are those in which the lease system prevails, under which the most shocking barbarities have been practiced, on account of which many good men have become prejudiced against the idea of letting prisoners work outside of prisons at all. It must,

however, be borne in mind that cruelty may be practiced as well under one system as under another, and that there is no more excuse for its infliction where prisoners work outside of prisons than where they do not.

The Warden of the Northern Penitentiary of Illinois—an institution having nearly sixteen hundred inmates—recently stated to the writer that he was in favor of the purchase by the state of a large tract of land lying near the prison, so as to enable him to carry on farming and gardening with the prisoners for the purpose of supplying the prison with farm and garden products, and he added that he believed it to be entirely practicable to do this.

To carry out the foregoing, and also to overcome the objections to the present system considered in the last chapter, it will be necessary to change *involuntary* into *voluntary* labor, which can be done by paying each convict wages nearly equal to the current wages paid to free men for like work, and then charge the convict with the total expense of his keeping, including guarding, superintending, clothing, feeding, etc. As the average cost of keeping a convict is usually not much over thirty cents per day, and as he could, if laboring voluntarily, earn much more, there would soon be a surplus in his favor. This surplus should be placed to his credit, and be applied toward the support and education of his family or other dependents, if there are any, and if there are none, then to be held on deposit until his discharge; and when he is discharged he should be paid a small portion of his money—say enough for transportation to the point he may desire to reach, and for his support for a month or longer, until he shall have again become accustomed to the ways of the world and have had time to

determine what to go at for a living, and then he should be paid the remainder. He will thus have saved something out of the years of his confinement, and will have something to start on. He will not be driven at once to beg, steal, or starve, and will not be likely to soon again find himself on the way to the penitentiary.

This would be salvation to all those that really wanted to live respectable and useful lives, and it would have a good influence on even the abandoned; for nothing is so adapted to steady a man as first training him to work and then letting him accumulate some property. As soon as he has something to call his own, he begins to grow conservative; there is aroused in him a desire to better his condition, and he will avoid the vicious from a sense of self-protection, if for no other reason.

Under this system almost every convict would become willing and eager to work, and the present stolid indifference of some prisoners, who care for nothing but to drag through the weary days, the hopeless despair of others, and the desperation of still others, would give way to hope in most and to comfort and satisfaction in all; for even they who know that their days must end in prison would feel that they could make some beings comfortable, if not happy, by contributing something to support those to whom they should have been protectors.

I am aware that the state can not carry on business as economically as private individuals—or at least rarely does so—but it will be noticed the state has very much of an advantage to start with. It is not required to pay rent or interest on the investment in buildings, machinery, etc.; for even in those institutions which under the present system

boast that they have become self-sustaining, no allowance is made for rent or interest on investment. This is certainly a large item, and one would suppose it was alone sufficient to enable the state to pay the same wages (not necessarily per day, but for work done) that was paid by private parties, and come out whole.

But as shown heretofore, under the present system the state loses, directly and indirectly, very large sums of money annually, besides the loss, both financial and of a higher character, that will result from the evil effects upon a large proportion of her citizens; so that if the state were, under the proposed system, to lose money, it is doubtful whether she could by any possibility suffer as much in the long run as she suffers now. However, as there would be at least twice the amount of work done as there is now, it is difficult to see how the state could possibly lose anything.

Should the contract system be preferred to the public account system, the matter can be easily arranged by requiring the contractor to pay the prisoner for what he does—that is, in all cases where possible paying him by the piece; where this can not be done, paying him for a full day's work when he does it. All the contractor asks is to have the work done. If, therefore, a convict is willing and able to do as much in one day as he formerly did in two, the contractor should not hesitate to pay him double the wages. Nay, he could in that case pay more than double the wages, because he saves the expense of superintendence and of furnishing power and of other incidentals for one day—that is, in that case one-half of what he now pays for the last named items would be saved to him, and he could afford to pay more than double the wages he now pays. Besides, the

work would be done better, for a willing man always does his work better than an unwilling one, and his goods will therefore command a higher price in the market. But the "piece price" system of managing convict labor is the best thus far devised. Under it, the contractor simply furnishes the material and agrees to pay a stipulated price for having it manufactured. His agents have nothing to do with the prisoners, as now, and the state neither buys material nor sells manufactured products.

CHAPTER III.

THE OBJECTION THAT CRIMINALS WILL NOT WORK—MAKE TIME OF DISCHARGE IN PART DEPEND ON SURPLUS EARNINGS—AIDS IN PRESERVING DISCIPLINE—TOO MUCH PRISON LABOR—WORKING OUTSIDE PRISON WALLS—WASTE OF SENTIMENT—LABOR AS A PART OF THE PUNISHMENT—RESULTS.

It will, however, be objected by those with whom the reformation of criminals is no object, who see nothing worthy of consideration about any person in prison, that the criminal classes do not work except when compelled to, and that the chance of earning some wages, over and above the expense of their keeping, would not induce them to make any extra effort, and that therefore the proposed system would fail.

To this I reply that, supposing the objection to be good, supposing it to be true that many convicts would not do any more than they were compelled to do, and consequently would not earn anything over and above the total expense of their keeping, then there will still be nothing lost. Society will still be as well off as now, for that is all that the best are made to do now on the average.

But the objection is not well taken, for it has been found that the majority are eager to earn something, if only given a chance. Thus, in the Michigan State Prison, where the contract system prevails, and where no provision is made

for giving the convicts an opportunity to earn something for themselves, but where, nevertheless, those who worked by the piece were not prohibited from over-work, it appears from the report of the inspectors, that during the year 1881 this class of convicts earned, over and above what they had to do, \$9,485.85; and during the year 1882 they earned \$11,154.75 by voluntary over-work. Referring to this, the inspectors say:

"This sum has been paid by the contractors to the prison, and been credited to the convicts in proportion to their several earnings. This money is in many cases remitted by the convict to his family, and what remains, if anything, is paid to him at the expiration of his term. It is not unreasonable to suppose that some, at least, have in this way done more for the comfort of their families than they would have done had they remained outside."

This was earned in spite of the fact that no provision was made to earn anything for themselves. Will anybody deny that had there been regulations permitting, nay, requiring all convicts, including those who were not assigned to piece work, to earn something for their families or themselves, that they would not have done it, especially if they knew that they could not be set at liberty until they had made certain provisions of this kind?

In the inspectors' report of the Western Penitentiary of Pennsylvania, I find the following:

"In the shops we aim to have order and silence; unruly conduct is punished, and excellence of labor performed is rewarded by a proportionate division of profit with the prisoners, in the shape of over-work. In this way many of the convicts are enabled to make weekly or monthly remittances

to their homes, thus contributing towards the support and comfort of the dependent ones, made so by their indiscretions. During the past two years, \$26,080 have been earned in this way, and for the most part distributed as stated."

In Minnesota the convict in the State Prison is allowed for good conduct six days every month, for which he receives the same rate the contractors pay the state. The money thus earned may be paid by the prison authorities to the convict's family, if needy, and when not thus paid it is given the convict on being discharged; and many convicts on leaving the prison have had upwards of \$150 to their credit, with which to start again in life. Are these not more likely to do well than if they had not a cent?

In 1876, Mr. Richard Vaux, president of the board of directors of the Eastern Penitentiary of Pennsylvania—one of the very best institutions of the kind in this country—in speaking of the work done there, said:

"Manufacturing material is bought at market prices, and the goods manufactured are sold at the same; so that there is no unfair competition with manufacturers who employ honest men. The convicts are allowed pay for over-time. *One man supported a wife and family outside of prison by over-work done in prison.* The prisoners cost about thirty-four cents a day, *per capita*. Labor is not farmed out, nor let out by contract. We are not self-supporting, and I trust we never shall be. When a prison becomes self-supporting, it is just what prisons are not intended to do." (The italics are mine.)

The inspectors of the same prison, in their report for 1881, say:

"As a reformatory agency, intended also to stimulate the

self-respect, strengthen and preserve the ties of father and husband and family, the system of over-work has been adopted in this institution. The task of each prisoner, able to work after he has been taught, is fixed. All the prisoners are included in this provision. When the task has been completed, then whatever excess of work is done by the prisoner is divided; one-half is given to the county sending the individual, and the other half is credited to him on the books of the clerk. He can give orders for his share to his wife and family. These orders are in printed forms, signed by the prisoner and attested by his overseer, and entered into a separate account kept for each prisoner. When these orders are presented to the clerk, they are paid, and the receipt endorsed on the order. If no orders are given, the prisoner receives his share on his discharge. During the year, over \$10,000 has been gained by the convicts and paid to them or their respective families. It is believed that decided good results from this plan, and even in an economic view it is of decided advantage. Labor thus applied * * * gives to convict labor a phase that neither degrades the laborer nor adds a stigma as an inflicted punishment."

William Kunz, Superintendent of the St. Louis Workhouse, says:

"By carefully studying the habits and inclinations of the prisoners, I arrived at the conclusion that a greater amount of work could be obtained from them by offering a reward to the industrious prisoners, than by exacting work from them under the threat of punishment. With the consent of the Board of Public Improvements, and the approval of his Honor, the Mayor, I established task work for all such

labor as the possibilities would allow, whereby a prisoner inclined to be industrious has the opportunity afforded him of materially shortening his imprisonment by making overtime. Of this a great many prisoners have availed themselves. To others, to whom, from the nature of their employment, no regular task could be assigned, I have held out the promise of executive clemency as a reward for their industriousness, and it has frequently been earned, and, after a proper investigation, has been granted by his Honor, the Mayor. The system works very satisfactorily; the foremen in charge of the various gangs have fewer complaints of indolence of prisoners; cases of punishment for failure to perform the amount of work expected are becoming rare, and the production of the institution has been materially increased."

Wines, in his exhaustive treatise on Prisons, in referring to America, says:

"In a few of our prisons, the convicts are allowed some small share of their earnings; and the influence of this is admirable indeed, almost magical." Again, he says: "The practice of allowing prisoners a share of their earnings has not been extensively adopted in America. But wherever the principle has been introduced, its effect has been excellent. Let me cite an example: The Allegheny County Workhouse, at Claremont, Pennsylvania, a correctional prison for persons guilty of minor offenses, has introduced this principle into its administration. Its chief industry is the manufacture of kerosene oil barrels, which is carried on in two large work-shops, in the same building, one above the other. At a certain point in the manufacture, the casks are passed from the lower to the upper shop, and the pris-

oner receiving them at this point is required to finish seven for the institution, without any gain to himself, after which, for each additional barrel completed he gets five cents for himself. The average day's work outside, for a free laborer, is about fourteen. Under this stimulus, I saw prisoners making twenty-four barrels a day, and the average daily production is from sixteen to eighteen, equal to one and one-fifth day's work of ordinary workmen in free shops outside. At first the proprietors of the petroleum refineries laughed the superintendent to scorn for thinking that he could utilize the labor of his short-term men on such a manufacture at all, the average sentence being a little over two months. But the laugh is now on the other side, for the prison-made barrels actually command five cents apiece more in the market than those made in the outside factories. Most of the work done in the lower shop is unskilled, and for a time the prisoners working there received no part of their earnings. At length the superintendent hit upon the plan of giving to each prisoner against whom there was no complaint at the end of the day, a credit of ten cents for that day. The effect of this was magical. I visited the establishment three or four months after the plan went into effect, and not a man in the shop had received a single black mark. All had regularly gained their credits of ten cents a day. The daily amount of work performed in that shop had also very sensibly increased."

The same author has traced the history of the struggle of prison reformation in Europe, amid the corruption, brutality, and officialism of the past, and cites several instances of success that merit attention. Speaking of Belgium, he says :

"Near the middle of the eighteenth century, all Europe was desolated by the scourge of innumerable tramps. *
* * * Out of this fact grew a remarkable reform in penitentiary science and practice in that part of Europe which now forms the kingdom of Belgium. * * *
Prince Charles, then (1765) Governor General of Flanders, called attention of the privy council at Vienna to the inefficiency of whipping, branding, and torturing for the repression of the evil. * * * But the most important agent in this work of reform was Viscount Vilain XIV. *
* * He was the founder of the Great Central Convict Prison at Ghent. * * * Here, then, we find at Ghent, already applied, nearly all the great principles which the world is, even to-day, but slowly and painfully seeking to introduce into prison management. What are they? Reformation as a primary end to be kept in view ; hope as the great regenerative force ; industrial labor as another of the vital forces to the same end ; education, religious and literary, as a third essential agency ; abbreviation of sentence and *participation in earnings* as incentives to diligence, obedience, and self-improvement ; the enlistment of the will of the criminal, etc." The result of this management was a remarkable success. Again, he says that : "Among the most remarkable of the early experiments in prison discipline was that of Colonel Montesino in the prison of Valencia, Spain, containing from one thousand to fifteen hundred prisoners. This experiment covered the period from 1835 to 1850. Previously the re-committals had run up to forty, fifty, sixty, and even seventy per cent. For the first two years no impression was made upon these figures, but after that they fell rapidly, coming down in the end to nearly or quite zero. To

what was this remarkable decrease owing? Mainly to the use of moral force, instead of physical, in the government of the prison. He introduced a great variety of trades, about forty in all, and allowed the prisoner to choose the one he would learn. * * * He seized those great principles which the Creator has impressed upon the human soul, and molded them to his purpose. He aimed to develop manhood, not to crush it; to gain the will, not simply to coerce the body. He employed the law of love, and found it the most powerful of all laws. * * *

* *He excited the prisoners to diligence by allowing them a by no means inconsiderable portion of their earnings.* He enabled them to raise their position, step by step, by their own industry and good conduct. * * * Mr. Hoskins, an intelligent English traveler, after giving an extended account of the prison, adds this conclusion: 'The success attending the reformation of the prisoners in this establishment seems really a miracle.' "

Wines also records one other remarkable case, and that in a country where it was least to be expected — Russia. It appears that Count Sollohub inaugurated a system, in the house of correction in Moscow, similar in its general features to that last described. So long as a convict remained an apprentice, he got no part of the product of his labor; but as soon as he was adjudged to be a master workman, he received a proportion equal to two-thirds of his entire earnings, the greater part of which was reserved for him as a little capital to again begin life with after his liberation. So effectual was the power of hope thus applied, that in some instances the convict apprentices learned their trade and became master workmen in two months. Nine-tenths of all

learned their trades so thoroughly that, on their release, they could fill the position of foremen in other shops. And, further, there were scarce any relapses; so that of 2,128 persons released during the first six years, only nine were returned to prison.

But the times were not ripe for such a reform in either of the countries mentioned. Corrupt and rapacious officialism, which sought only to make money out of the prisoners, soon managed to get other men in charge of the prisons, with whom reformation was no object; and as in each case the systems which had been productive of such good results were not supported by law, but had depended on the overseer alone, they retired with him, and the old order of things continued.

Make Time of Discharge in Part Depend on Surplus Earnings.

But as a most powerful incentive to work that can be thought of, if such a thing is necessary to induce some prisoners to work, *let the law provide that no prisoner shall be set free or given his liberty until he has earned a certain sum with which to start out again in life,* — except where he has been supporting his family out of extra earnings.

There is no doubt that this would transform almost every convict into a most anxious and energetic laborer. For no matter how averse the worst man may be to labor, still the anxiety to get free again, which is powerful with all prisoners, would overcome the aversion.

Aids in Preserving Discipline.

Under such a system, it would be a comparatively easy matter to keep up the strictest discipline. Corporal punish-

ment, or confinement in dark cells, etc., would rarely, if ever, need be resorted to. For the fear of having his surplus earnings diminished by very small fines, as well as having his term of imprisonment lengthened, would make almost every prisoner willing and obedient.

Too Much Prison Labor.

If it is objected that there would then be too much prison labor performed, by which free labor would be injured, I answer that, in the first place, there would be no more men at work than there would have been, or at least should have been at work, if there were no prisons; and, as the prison labor was no cheaper than the free labor, no injustice was done to the free laborer. In fact, one great cause of complaint that now exists — viz., the cheapness of prison labor— would be done away with.

And, further, as the temptation to desert would then be but slight, the prisoners could be divided; so that while the vicious, and those who had long terms to serve, were kept within the walls, the remainder could more generally be set at work for which they were adapted, both inside and outside of the prison. Instead of being confined to the few trades that can be successfully carried on inside prison walls, prisoners could be set at almost every kind of manual labor; and, instead of having to crowd all of them into a few branches of industry, as is now done, and thus overstocking them, they would be distributed more nearly as they would have been had each selected work from choice as a free man. Surely no fault can be found with this. In all cases where a young man is imprisoned for a term of years, and he desires to learn a trade by accepting lower wages for a time,

he should be permitted to do so. In other cases, the prisoners should, as nearly as may be, be set at such work as they are adapted for, or as they followed before conviction, and can successfully follow after they are again set free. Especially should those who had no honest vocation before conviction be set at work which they could successfully follow when again set free; for it is idle to expect a man to be industrious and make an honest living, if he has no means of being or doing so.

Working Outside Prison Walls.

The idea of working prisoners outside of prison walls, when possible, has been tried and found to be highly beneficial. In fact, this is about the only thing that is urged in favor of the *leasing* system which now prevails in many of the Southern states, under which prisoners work plantations, work mines, build railroads, etc. True, there it has been marred by the brutality practiced; the lessees, and not the state, having charge of the prisoner, and feeling no interest in him except as a machine, to be worked as hard as possible, at the least possible outlay. So that the convict soon becomes worse than a slave, and almost destitute of hope; for the master of a slave had an interest in his preservation as so much property, and saw to it that he was at least properly fed, housed, and cared for. But not so with the lessee of a convict. He has no interest in the convict, except for the work he can get out of him. But if the state were to keep charge of the prisoner, and give him an interest in his work, the whole would be changed. Not many would think of deserting, and perhaps the majority of all those now confined could be set to work at various things outside.

As some convicts (working at skilled labor) would get higher wages than those who worked at unskilled labor, it would perhaps be proper to charge the skilled laborer a little more for his keeping than the common laborer, in order to prevent too great a difference between them in this respect. But as heretofore stated, in all cases of young convicts they should be required to learn a trade, and that a trade, if possible, that they would have selected as free men. But in any event, the employments should be diversified as much as possible.

In this connection, I quote from the report of the Bureau of Labor Statistics, made to the Legislature of Illinois for the year ending Jan. 12, 1881, which is a remarkably full and able document. The Bureau had availed itself of the reports of the committees appointed by different states, particularly Massachusetts and New York, to investigate the question of prison labor. Among other recommendations are the following :

"Fifth—Increased diversity of employment in penal institutions tends not only to lessen whatever competition now exists, but has an excellent reformatory effect on the prisoners."

Again, the same report recommends: "That whenever possible, farms shall be carried on by the prison administration for the supply of the institution."

Waste of Sentiment.

But there are some who will pronounce all talk about humane treatment of convicts a waste of sentiment, because, say they, "these fellows are criminals, and not entitled to any consideration, and would neither do better nor reform

if they could." This objection is ill-considered; for, as heretofore stated, the most of them are more weak than criminal, and, second, experience has shown that the great majority of convicts are capable of reformation, and that the chances of their reforming are always in proportion to the humane treatment received. Under the old system and in the old prisons, as in the existing prisons of this country where brutality is still the reigning deity and cruelty the only disciplinarian, there is no hope for the prisoners; few if any of them ever reform. Even if they possessed both self-respect and a desire to do better at the time of entering the prison, the treatment received either forever breaks their spirits or makes them desperate; and they leave the prison, if they survive at all, either total wrecks or desperate enemies, bound to be avenged upon that society which they feel has not simply punished them for their misdeeds, but has greatly wronged, if not ruined them. (See Chapters VII and VIII, of Part First.)

Labor as Part of the Punishment.

Again, it will be objected by some that the labor of the convict is a part of his punishment, and therefore to give him the benefit of a part of his labor would be to reduce his punishment. This objection grows out of a misapprehension of the objects for which labor was introduced in the larger prisons. This was not as a punishment, but as a sanitary and humane measure. Its object was to benefit the prisoners, to give exercise to the body, and to employ the mind. For it was found that when men are doomed to a long period of enforced inaction, they break down, both physically and mentally, so that the death rate in the old

prisons was fearfully large, and what may be called the *insanity rate* was still larger. And there are prisons for the convicted where the prisoners do not work. Yet in the eye of the law the punishment is the same. The punishment consists in the disgrace of conviction, and in the imprisonment, *i. e.*, being deprived of his freedom. The idea of the state making money out of the earnings of the prisoners was an after-thought, and it is only in recent years that this has been considered. While in some states it has been thought quite an achievement to make the penitentiaries *self-supporting*, in others, where the subject was more carefully considered, this has been made a secondary matter, and the reformation or moral development of the prisoners is considered the matter of greatest moment. Thus, Governor Hoyt, of Pennsylvania, in his last message to the legislature of that state, expressed himself as follows on this subject :

"In neither of the penitentiaries of this state has there ever been an attempt yet made to administer them on the vulgar, wicked, unworthy consideration of making them self-sustaining. In neither of them has it been forgotten that even the convict is a human being, and that his body and soul are not so the property of the state that both may be crushed out in the effort to reimburse the state the cost of his scanty food, and at the end of his term what then is left of him be dismissed, an enemy of human society."

But all that could possibly be claimed for the state, in any event, is that it should be paid out of the earnings of the convict the actual cost of keeping him. It has no right to make a slave of him. It has no right to take his services from him without paying him, any more than it has a right to take his property from him without making compensa-

tion for it. When, therefore, as at present, the state prohibits him from earning anything over and above the expense of keeping him, it is forcibly taking something valuable from him without making compensation. For it might as well take his property as his time. While it has the legal right to take both to an extent sufficient to make good its outlay, it has no right to take any more. This is no part of the legal punishment. The idea of the state trying to make money, over and above the outlay, out of its convicts, is monstrous; and the right to do so has never yet been claimed. See report of inspectors of Pennsylvania Penitentiary on this subject, as follows :

"There is a broader, more scientific, and far more important view to be taken of the duty society owes to itself, and to those convicted for crimes against its security and welfare, than that narrow, selfish and pecuniary consideration which is satisfied in proclaiming that the state has made a money profit out of the crimes of its citizens."

So that the plan suggested gives the state everything it is entitled to; and I will add, it is a serious question whether the state had not better forego even the right to deduct the cost of keeping in some cases, in order that the prisoner may be the more certain to be self-supporting when again free, rather than to take the chance of having to re-arrest and re-incarcerate him.

Results.

I therefore claim that by the proposed change :

First—Discipline could easily be maintained.

Second—There would be no loss in productive labor to society; in fact there would be an increase, for those who

have never been taught to work, and consequently prey upon the community, would not only be compelled to work as much as they are now, but most of them would, under the conditions above mentioned, work to the best of their abilities, so that in effect there would be restored to society a vast amount of productive labor which is now lost.

Third—The innocent, *i. e.*, the family and dependents of the convict, would not be punished by being deprived of his support, as they now are, but would be supported by his earnings—not only as well as, but in many cases, where he was dissolute, very much better than when he was a free man.

Fourth—The kinds of labor that could then be carried on being greatly increased, the convict being put to work at something for which he was adapted and which he could follow when again released, would, as a rule, learn to do his work well; and, further, would learn to work rapidly, and thus, instead of being turned out a stolid and desperate man, who has trained himself for years simply to put in his time without regard to results, and is consequently not prepared to do a full day's work, he would be able to do as much work as anybody, and therefore much more likely to get along.

Fifth—When again set free, if his money has not been used to support his family, he will in many cases be comparatively independent; he will not find himself without money and without friends, shunned by everybody and unable to get work, and thus at once driven to beg or steal; but would have money enough not only to support him for some time, until he can find something to go at, but in many cases, where the best years of his life have been spent in

prison, he would have means enough to enable him to do a small business for himself.

Sixth—All convicts would not then be forced into a few trades, and the present objections to convict labor would be at least in part removed.

Seventh—The chances of reformation and development of moral character would be all in favor of the convict, instead of being almost entirely against him, as now.

APPENDIX.

UNNECESSARY IMPRISONMENT.

AN ADDRESS DELIVERED BEFORE THE NATIONAL PRISON REFORM ASSOCIATION, AT DETROIT, MICH., OCT. 21, 1885, BY JOHN P. ALTGELD.

Early in this century, Sir Samuel Romilly, after years of disappointment, succeeded in effecting what was regarded as a great reform in the criminal law of England. But his reforms were limited in their scope, and related only to the punishment to be inflicted after trial and conviction in certain classes of felonies. He stopped the practice of inflicting inhuman barbarities in the name of punishment in certain cases; and so great was the opposition that it took all his life to accomplish this. He had no time to insist that the punishment inflicted on the poor, who can not pay a fine, and are guilty, say, of a breach of the peace, should differ not only in degree, but also in character, from that meted to those guilty of heinous crimes—that the former should be treated rather as moral patients who needed treatment, than malefactors to be punished. He had not the time to point out that it was monstrous to treat all who may chance to be taken into custody precisely alike until after trial and conviction (unless they can give bail), whether they

have committed a felony or simply shouted too loud upon the streets.

In at least these two particulars the criminal law has undergone but little, if any, change, and stands to-day substantially as it did centuries ago, and may be said to be mediæval not only in origin but in character. And the various criminal codes of this country are, with some slight modifications, simply enactments of the criminal law of England as left by Romilly; and most of the cities and municipalities, in framing their ordinances in relation to minor offenses, have blindly followed the codes in this respect. So that young men and boys, and even girls, accused of violating some city ordinance, are treated by the police and the police magistrates, in the first instance, in the same manner as the hardened criminal. They are arrested; not infrequently clubbed; sometimes handcuffed; marched through the streets in charge of an officer to the station, which in many cases is worse than a jail, where a full description of each is written down opposite their respective names, and then they are required to give bail for their appearance at some time in the future when the magistrate can hear their case. If they can not furnish the bond instantly—and generally they can not—they are shoved into a cell, and frequently occupy the same cell for a night, and sometimes for a week, with the most desperate of criminals. The station-keeper is not to blame for this, for the law has made no other provision and left no alternative but to lock them up.

Attend a session of a police court in any of our large cities, on almost any morning, and you will see on the sawdust in the prisoner's pen a miscellaneous lot of humanity of

both sexes, ranging from middle life down to tender years, nearly all from the less fortunate class in life—poor, more or less ragged, with misery stamped deep into their faces, weak, with little or no training, no steady habits, without homes worthy of the name, and raised in an atmosphere destitute of good and pregnant with vicious influences. As their cases are called, you learn that about one out of twelve is charged with a serious offense; about five-twelfths are charged with minor offenses, but there is something about the appearance of the accused which tells you they have made this round before. The remaining half are also charged with minor offenses, such as drunkenness, disorderliness, etc., but you soon become satisfied that they are not yet thoroughly depraved; that while they may have violated some ordinance, they yet have the stuff in them to make good citizens if given a little better chance; and as you look at them, the conviction settles in your mind that it was unnecessary, and therefore wrong, to drag them in and corral them like so many cattle, and that neither they nor anybody else will be benefitted by such treatment. If you ask the magistrate why they were thus treated before they had even been tried to see if they were guilty, he will tell you that the law required this; that under the law no other course was open.

You sit down while their cases are heard, and to your surprise find that about one-third are discharged by the magistrate because the evidence fails to show that they were guilty of any offense whatever. (The police reports show that nearly one-third of all that are arrested are discharged by the magistrate.) Turning then to those not discharged, you find that a few, being shown to be probably guilty of

the graver offenses, are bound over for the action of the grand jury, while the great majority are shown to have violated some ordinance, and are fined; and as the fines are not paid at once in many cases, you see men, women, and often children, crowded into an omnibus with iron grating at windows and door, and driven to the work-house or Bridewell (which may properly be called a short-time penitentiary) to work out the fine, or in the absence of a work-house they are led back to jail to serve out the fine at so much a day.

Dismissing from your mind those bound over for the action of the grand jury, and calming your feelings by saying that the security of society requires that those shown to be even probably guilty of serious offenses against property or human life should not be permitted to roam at large, you turn to consider the omnibus-load of ragged humanity—some thoroughly vicious, some simply besotted, some almost innocent. Children, women, men, all thoroughly wretched, going to the Bridewell—some for twenty, some for sixty, some for ninety days, and a few for even a longer time, for having violated some city ordinance; and as you wonder what is ultimately to become of these people, you find yourself both asking and then answering questions after this fashion:

“Will these people be any better when they regain their liberty?” “No; for there is nothing in this treatment that is adapted to make anybody better.” “Will they be more intelligent or better educated?” “No.” “Will the idle be more industrious?” “No.” “Will the industrious be more able to get employment?” “No; on the contrary, this stigma will be in their way.” “Will the

untrained be masters of a trade?" "No." "Will they have better homes?" "No." "Better friends?" "No." "Better surroundings?" "No; if anything, poorer surroundings." "Will those who now have no homes then have places to go to?" "No." "Will society extend them a helping hand?" "No." "Will there be any Christian door open to receive the women and children on their return?" "Scarcely." "Will the self-respect of any be raised and they, therefore, be stronger?" "No; on the contrary, the self-respect of all will be lowered and they will, therefore, be weaker." "Will the good intentioned, but weak, be better off?" "No." "Will the viciously inclined be more subdued?" "No; on the contrary they will be a little more desperate." "Will those without homes have any money when they leave the prison, with which to maintain themselves until they can find a home or something to do?" "No; not money enough to pay for a night's lodging." "If men who have not been imprisoned find it very difficult to get employment, will these people find it easier?" "No; on the contrary, they will find it harder." "Then what are many of them to do?" "Well, they can beg, starve, or steal." "How will the police treat them?" "Well, the police call them jail birds, or Bridewell birds, and seem to take a delight in 'running them in' again at the earliest possible opportunity." "Then will many of these people make this round again soon?" "Yes; experience teaches that they will, and that they will become a little more vicious and desperate as they do so."

"Referring to those not yet vicious or criminal—the boys, the women, and first offenders generally—whence does

society derive its power to thus incarcerate them?" "From the right of self-protection." "Was it, then, necessary for the immediate protection of society to thus treat these first offenders?" "Oh, no; but this is done to enforce respect for the majesty of the law, and thus prevent others from violating it." "How long has this been going on?" "Oh, several hundred years." "Well, then, how has it worked; does this practice actually deter others, and are there really less arrests now in proportion to population than formerly?" "No; to tell the truth, there are more." "Can this practice, then, be truly said to protect society?" "Well, no." "But suppose that arrest and imprisonment had a repressive influence on outsiders; would you not get enough of it by the arrest and incarceration of the actual criminals and hard cases, and don't you destroy the efficacy of your remedy—in fact, rob it of its influence—by applying it so indiscriminately and making it so common?" "Well, the results indicate that this is so." Finally: "Does society get any benefit from this treatment of its first offenders?" "On the contrary, to say nothing of the expense, it is a question whether this practice of imprisoning people for trifling offenses does not constitute the training which crushes the self-respect and by degrees forms those desperate characters whose crimes all over the land make men shudder."

Now, I ask, if instead of this superficial and in a sense unjust system, which requires a conviction if there is a technical offense proven, and after conviction allows some who can pay a fine to escape incarceration, while it sends the poor to the Bridewell, no matter what their physical or moral conditions may be, and no matter what the past his-

tory of the accused may be, and without reference to the question as to whether such a course is necessary for the well-being of society—it would not be better in all minor offenses to adopt a practice which would require, not only proof of a technical offense, but also an inquiry into the moral condition of the accused, his habits, associations, etc., and then, except in extreme cases, permit, if you please, a suspension of sentence, and release the accused with the understanding that if his conduct in future give no offense he will not be disturbed, but that otherwise he will be taken into custody? This would have none of the degrading influence of actual imprisonment, and at the same time it would be a most powerful incentive to good conduct. And at the same time make it the duty of some officer as far as possible to assist the delinquent in getting employment, finding a home, etc. This latter plan has been tried both in Massachusetts and in Baltimore, with the most happy results.

And in extreme cases, or cases where repetition of offense required a sentence of imprisonment, would it not be better to adopt the indeterminate sentence system, whereby the maximum time of imprisonment would be fixed, but the actual term would be determined by the conduct of the accused, and his probable ability to become a law-abiding citizen? And supplement this, not only with educational influences that shall develop his character, but also with a provision requiring him to work, and at the same time giving him an interest in his work, so that a certain per cent. of what he earned every day shall be carried to his credit, and be applied, either to the support of his family or paid to him, not at, but after, the time of his discharge. And fur-

ther provide that in no case shall a prisoner be discharged until he has earned a sufficient sum to his credit, so that on regaining his liberty he will not be an outcast or in a position where about the only alternative he has is to steal or starve.

The idea of giving prisoners a part of their earnings has worked almost like magic where it has been fairly tried, and if the provision were added requiring him to have something ahead before he could be set at liberty, almost every prisoner would be a willing laborer, which is the very first requisite in effecting his reformation and developing character. Under such a system only the incorrigible would ever need to be imprisoned, and when they are imprisoned, instead of being discharged in twenty or sixty days, as is now the case, simply to make the same round again, they would be held for such a length of time and under such conditions as would make it at least possible to create habits of industry and develop character, so that, when finally released, there would be at least ground to hope for reform. The large class of repeaters, loafers, and known hard cases would soon be weeded out and subjected to a course of training which would not only tend to make them steady and self-supporting, but would free society from their presence and put an end to the farce of perpetual re-conviction.

Those Discharged by the Magistrate.

Turning now to those that were discharged; what about them? Well, most of what has been said about those not discharged will apply, if possible, with greater force to these; for most of them were innocent, yet they have been impris-

oned; their names and a complete description of their persons are on the prison records. They have been wronged, and will feel the indignity to which they were subjected as long as they live. They have been shoved down in the struggle to rise. They will hate and keep out of the way of the police. Many will sympathise with those who circumvent and defy the police. They will be more ready to slink into dark places; and as they become accustomed to dark places, they will become familiar with dark deeds, and many of them will soon make the round with those in the omnibus, and in time form a part of that ubiquitous horde against which we bolt our doors at night, and whose nocturnal visits, we dread worse than the plague. Society, in making war on these people without cause, has wronged them and at the same time made them its enemies, who are certain to be avenged.

But some one will ask whether there is enough in all these things to make much fuss over. In reply I will refer to the Report of the Superintendent of Police of Chicago, for 1884; and I take this because, in Chicago, the present system is found at its best, Chicago having one of the finest and best managed police forces in the country, and the proportion of arrests to population is, if anything, smaller there than in other large cities. According to the report, the whole number arrested in that city by the police, to say nothing of the arrests by state and county officials, during that year, was 39,434. Of these, 16,260, or considerably more than one-third, were discharged by the magistrates; about 2,000, or five per cent of all arrested, were held for the action of the grand jury on criminal charges; about 900, or one out of forty, were sent to hospitals or asylums; and

about 20,000, or a little over half of all arrested, were fined by the magistrates; 8,547, or about one-fifth of all arrested, were females; 17,566, or nearly half of all arrested, were without any occupations whatever. Of the whole number arrested, over 23,000, or considerably over half, were originally only charged with being either drunk or disorderly; and the fact that out of nearly 40,000 arrested, only about 2,000 were held on criminal charges, shows that 95 per cent were arrested for the minor offenses. Of these, 6,532 were sent to the Bridewell for non-payment of fines, which shows that they were of the very poor.

As already stated, in many sections of the country the proportion of arrests to the population is greater than in Chicago. It is therefore safe to say that during that year there were, including repeaters, nearly two and a half millions of people arrested in the United States, of whom about three-fourths of a million were discharged by the magistrates because it was not proven that they had violated any law, and therefore should not have been arrested. Notwithstanding the appallingly large number of arrests, crime seems to be on the increase, and careful observers are asking the question whether our penal system, instead of being a success, is not, through the needless arrests and the blind application of brute force, actually swelling the number of criminals in the land. We fancy that the constitution of the United States is a great bulwark of liberty, but you would be astonished to see with what ease a policeman and police magistrate will brush it all away when dealing with the poor.

The question may now be asked: "Why should people be arrested and locked up before there has been an examin-

ation to see if they are guilty of any offense?" In reply we say that it is right that persons charged with crimes which indicate a wanton disregard of human life or of the property rights of others, on the part of the accused, should be restrained as long as there is even a probability of their guilt; that the safety of society may require this. But I submit that in all those cases where the offense charged is simply a misdemeanor, and where there is nothing to indicate that society will in some way suffer or be endangered before a trial can be had unless the accused is placed in custody or put under bonds, he should not be deprived of his liberty until shown to be guilty.

"O, but," says some one, "if that were the practice, every one in danger of being convicted of a misdemeanor would run off, so that by the time you had your trial there would be nobody to fine or collect costs from." Well, suppose for the moment that this were true; who would suffer by it? Mind you, those whom we are considering are not criminals. There is nothing in their case to indicate that if they were to go away and settle in some other community, they would endanger the lives, or property, or even the peace, of others. And this is the only ground upon which society has the right to deprive a citizen of his liberty before conviction.

Furthermore, if those charged simply with the more trivial offenses were to leave the country before conviction, never to return, would not this of itself be as severe a punishment for them as could be inflicted? The thought of being obliged suddenly and forever to leave the community in which one has his abode, is to most people horrible—so much so, in fact, that the probability of escape before conviction would be slight. Society derives its power in the

premises solely from the necessity of protection; therefore, in all cases of this grade in which the safety of society does not require the confinement of the accused before trial, society has no right to deprive him of his liberty until after conviction.

The practice of imprisoning before trial, in cases where some trifling offense was charged, never came into existence as the result of a careful consideration of the best interests of society, but had its origin in that mediæval barbarism which regarded every kind of violations of law as a source of profit—a source of revenue at first for the feudal lord, and later for the magistrates, jailors, and other small officials. The more numerous the charges and the more protracted and complicated the proceedings, the fatter these officials got. And yet they were more consistent than we are. They understood that the liberty of an Englishman meant the liberty of the rich, and that the term was merely a beautiful fiction when applied to the poor; while we incorporate lengthy provisions about liberty in our fundamental laws, guarantee it to every man, woman and child, and then we adopt a system and permit a practice which even robs the fiction of its beauty—a system and a practice which gave more suffering, more misery and more degradation to the poor of England than all her wars. Strange as it may seem, we not only still follow mediæval ways—blindly make local applications of brute force for ills that require constitutional treatment—but we still make the failings and wrong-doings of a part of our people a source of revenue for others. In almost every city and town there are men who expect to support their families on the toll to be collected in the shape of fees from those who may, from time to time, be accused

of some violation of law. Think of a lot of officials, men in good standing in the community, directly interested in having the law violated, and who would starve if there should suddenly be a cessation of wrong-doing! Many of them watch with whetted appetites for an opportunity to have some wretch brought before them, no matter on what charge. If he gives bond, there is an extra fee for the bond; if he is sent to jail, there is an extra fee for the magistrate, an extra fee for the constable, and an extra fee for the jailor. What is it to them that they are crushing his self-respect and casting a stigma on a man and his family which may ruin him? The law permits it, and they are making money out of it, and that is enough. I am informed that the Legislature of Maryland, in 1882, abolished the "fee system," in so far as it related to Baltimore, and the result was a falling off in the number of arrests for minor offenses in that city, in one year, from 12,000 to 7,000, or almost half; thus showing that the "fee system" had been responsible for nearly half of the arrests theretofore made.

In addition to this, there prevails too widely the notion among policemen that their standing and efficiency as peace officers is to be determined by the number of people whom they run in. Hence the eagerness of many policemen to make arrests, especially in cases where they don't apprehend much danger. There was a time in the history of education in this country, when some people seemed to think that the efficiency of a school-teacher was to be determined largely by the number of pupils he flogged—as if flogging and not teaching was the main object of the school—and when there was in many schools a suppressed but constant hostility between pupils and teacher, and a perpetual effort on the

part of the pupils to deceive or outwit the teacher, and on the part of the teacher to detect the pupils; and as a result offenses of all kinds against the rules of the school were frequent and flogging a matter of daily occurrence. But now we have got to a point where we consider *teaching*, and not *flogging*, the chief end of the school, and we have discovered that to have a feeling of confidence, and even affection, between teacher and pupil is productive of far better results and that a very little use of the rod is sufficient in most cases.

Now, society demands protection to life and property and a preservation of the peace. That is all that it has any right to ask. It has no authority to sit in judgment on the sins of its members. This is a function which the Almighty has thus far reserved to Himself. It is with a view to protection solely that peace officers are created, and their chief object should be to keep the peace; but owing to the fee system and the false notion with reference to efficiency, a practice just the opposite in spirit has always prevailed. *Arrests* appear to be the prime object, and to *protect life and property* a secondary matter.

Read the report of some chief of police, and see with what genuine satisfaction he speaks of the large number of arrests; it shows that the force has been doing something. There is something spectacular, something almost brilliant, about our system; it makes a large showing so far as numbers are concerned. Sir Astly Cooper, the great English surgeon, was asked when once in conversation with another surgeon, who boasted of his own brilliant performances, how many *brilliant* operations he, Cooper, had performed in his professional career—that is, operations requiring a rare

union of nerve, dexterity, and skill—to which Cooper replied that he had performed thirteen operations which he considered of that character. “Thirteen,” exclaimed the other surgeon; “why, I have performed one hundred and fifty most brilliant operations; how many did you save out of your thirteen?” “Well,” replied Cooper, “I saved the lives of eleven out of the thirteen; how many did you save out of the one hundred and fifty?” “Oh,” was the answer, “they all died; but the operations were very brilliant.”

Now our peace-keeping establishment points with pride to millions of arrests annually, but when we ask how many are saved to society by reason of these operations, we learn that the patients all grow worse, except such as have sufficient moral vitality to recover in spite of the treatment they receive.

If we think most of that teacher who can teach a good school with but little flogging, why should we not think most of that policeman who can keep the peace, can protect society, and yet make but few arrests? We have found that mutual confidence and affection between teacher and pupil which follows kind treatment is productive of better results in the school than mutual hostility. Can anybody doubt that a kindly feeling between the police and, not the criminals, but the poor and the outcast, would produce better results than the mutual hostility which now exists?

“Oh, but,” says some one, “there is too much sentiment about this; those people are violators of the law and ought to be punished; they have done wrong and ought to suffer, and it don’t make any difference what becomes of them.”

To this I first demur, and then answer: I demur because

it does not lie in the mouth of any person not possessed of a perfectly white soul to raise this objection, and if none other raise it, we shall hear little of it in this world, for none of us is perfectly pure and none other has a right to sit in moral judgment on his fellow-man; very likely even the objector, if judged by the principles of eternal justice, would himself be in the lock-up. And I answer that in the first place it is not correct because as already shown over one third of all arrested by the police are discharged because not shown to have been guilty of any offense whatever, and further that if it is true, as competent observers assert, that notwithstanding our numerous arrests, crime is on the increase, that our present system makes criminals of many who would otherwise not become such, then it should be changed; and as we have been trying brute force and the crushing policy with such unsatisfactory results, let us stop locking up the young before conviction, and dispense with a little of the brute force, and in those cases where something must be done, try a system of development which, while it will protect society better than the present system, will also make it at least possible for the accused to come out with more character, moral strength, and self-respect, than he had when taken into custody.