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The Collected Works of
ALEXIS DE TOCQUEVILLE

(1805-1859)



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The Delphi Classics Catalogue

A stylized, cursive signature of Alexis de Tocqueville, written in black ink.

The Collected Works of
ALEXIS DE TOCQUEVILLE



By Delphi Classics, 2022

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Collected Works of Alexis de Tocqueville



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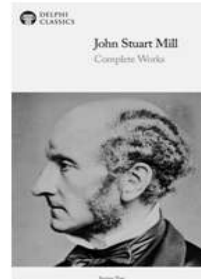
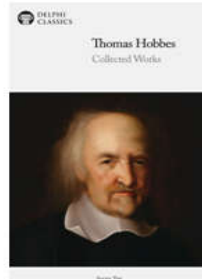
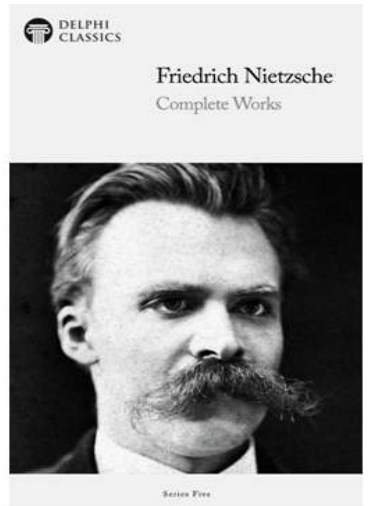
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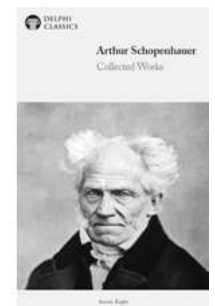
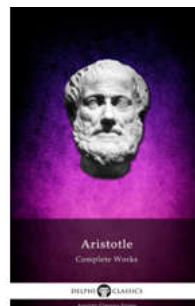
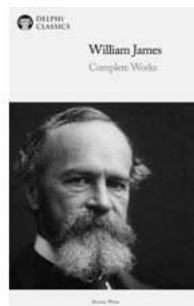
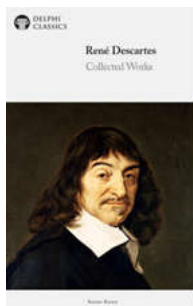
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PHILOSOPHY



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The Books



'Place du Chatelet, Paris' by Etienne Bouhot, 1810 — Alexis de Tocqueville was born in Paris in 1805.

On the Penitentiary System in the United States (1833)

AND ITS APPLICATION TO FRANCE



Translated by Francis Lieber, 1833

The great-grandson of the statesman Malesherbes, who was guillotined in 1794, Alexis de Tocqueville came from an old Norman aristocratic family. His parents, Hervé Louis François Jean Bonaventure Clérel, Count of Tocqueville, an officer of the Constitutional Guard of King Louis XVI; and Louise Madeleine Le Peletier de Rosambo, narrowly escaped the guillotine due to the fall of Maximilien Robespierre in 1794. Under the Bourbon Restoration, Tocqueville's father became a noble peer and prefect, enabling Tocqueville to enjoy a privileged upbringing, where he attended the Lycée Fabert in Metz.

In 1831, at the age of twenty-six, Tocqueville obtained from the July Monarchy a mission to examine prisons and penitentiaries in the United States and proceeded there with his lifelong friend Gustave de Beaumont, who in 1826 had acquired the position of King's Prosecutor at the Tribunal de Première Instance at Versailles. It was during this tenure that Beaumont first met Tocqueville and they had become good friends. Although Beaumont's eloquence and verve contrasted greatly with Tocqueville's bad rhetoric and asocial behavior, the two remained close, even when Beaumont was appointed to Paris in 1829 and they were separated for a time.

While in America, Tocqueville visited several prisons and travelled widely, making extensive notes on his observations and reflections. He returned within nine months and published a report, but the real result of his tour was *De la démocratie en Amérique*, which appeared in 1835. Beaumont also wrote an account of their travels in *Jacksonian America: Marie or Slavery in the United States* (1835). During this trip, he made a side trip to Montreal and Quebec City in Lower Canada from mid-August to early September 1831.



A sketch of Tocqueville as a young man

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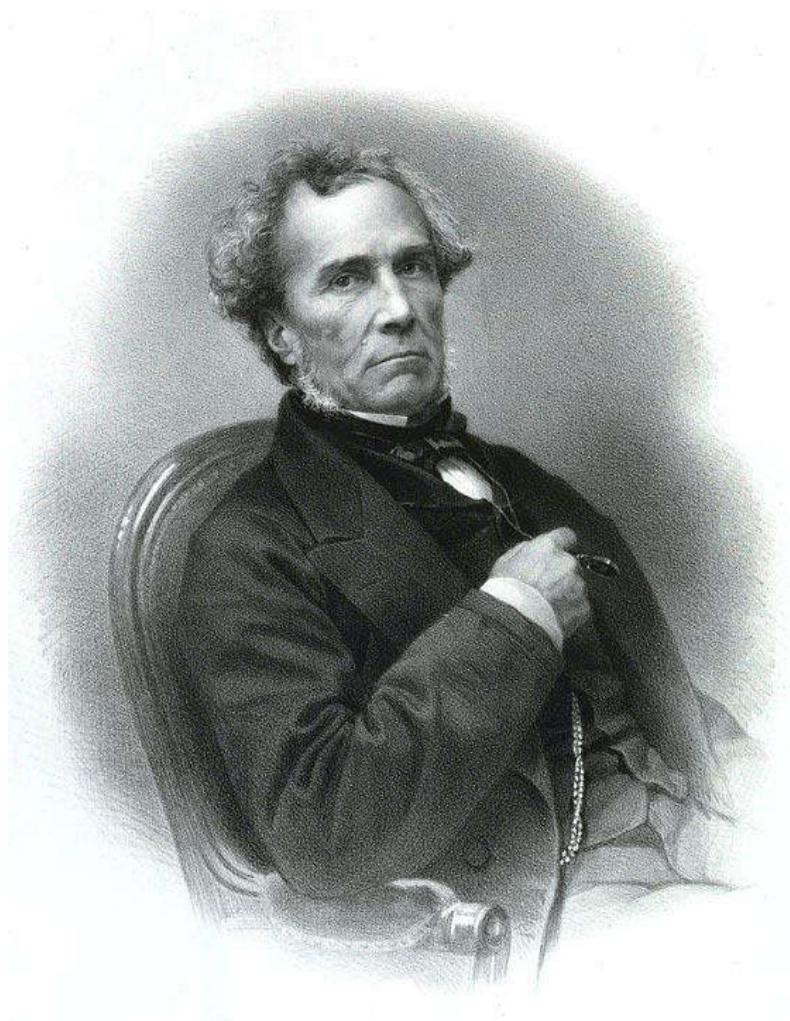
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Comte Gustave de Beaumont (1802-1866) was a French magistrate, prison reformer and travel companion to Tocqueville.

PREFACE,



SOCIETY, IN OUR days, is in a state of disquiet, owing, in our opinion, to two causes:

[NOTE: We live, every one will admit, in an agitated period — one of those epochs (in the opinion of the translator) which are characterized in history by the conflict of new principles with old, and whose agitation can cease only when the former acquire a decided ascendancy over the latter. We must be careful, however, that the Present does not appear to us in those magnified dimensions, with which it never fails to impress itself on our minds, if we do not view the Past and the Present with conscientious impartiality, and examine both with unprejudiced scrutiny — in many cases the most difficult task of the historian. The present evil always appears the greatest; but if we allow ourselves to be thus biased, we shall be liable to mistake the real aim after which we ought to strive, and the means by which we endeavour to arrive at it, and unconsciously will lend assistance to those who, more than any others, raise in our age the cry at our disturbed times — the advocates of crumbling institutions. They ought to be aware, that few times were more peacefully disposed than that in which we live, and which they are so anxious to represent as deprived of all solid foundation. If we examine century by century, from the seventeenth up to the beginning of the common era, where and when do we find peace? We meet everywhere with war, turmoil and party strife, contests often originating in frivolous cabinet intrigues, or kindled by religious fanaticism, or by interest and ambition hiding themselves under the pretence of defending sacred rights, inherent in individuals, for the purpose of obtaining sway over nations. The sober student of history must admit, that there never was a period possessing more powerful elements of peace, than our own; since the interests which determine the condition of society have become more and more expanded; are of a general and national, not of a limited, individual, and therefore, arbitrary character. These observations are by no means directed against the writers of the present work, but merely intended as a general remark on what we conceive to be a misconception very common in our time; and particularly against those who, taking for granted that the time we live in is more unsettled and disturbed, and that society is in a more feverish state than heretofore, are opposed to salutary and necessary reforms, extolling former times as those of happy ease. — TRANS.]

The first is of an entirely moral character; there is in the minds of men an activity which knows not where to find an object; an energy deprived of its proper element; and which consumes society for want of other prey.

The other is of an entirely material character; it is the unhappy condition of the working classes who are in want of labour and bread; and whose corruption, beginning in misery, is completed in the prison.

The first evil is owing to the progress of intellectual improvement; the second, to the misery of the poor.

How is the first of these evils to be obviated? Its remedy seems to depend more upon circumstances, than upon human provisions. As to the second, more than one effort has already been made to free mankind from it; but it is not yet known whether success is possible.

Such is the insufficiency of human institutions, that we see melancholy effects resulting from establishments which in theory promise none but happy results.

In England it has been believed that the springs of crime and misery may be dried up by giving work and money to the unfortunate; but we see the number of paupers and criminals every day increasing in that country.

There is not one philanthropic institution, the abuse of which does not border closely on its usefulness.

Alms, however well distributed, tend to produce poverty: and assistance afforded to a forsaken child causes others to be abandoned. The more we contemplate the

melancholy spectacle presented by public benevolence, struggling without success against human sufferings, the more we are obliged to acknowledge, that there exist evils, against which it is generous to strive, but of which our old societies seem incapable to rid themselves.

Yet the wound exists, open to every eye. There are in France two millions of paupers, and forty thousand liberated convicts, who have gone forth from the bagnes or other prisons.

Alarmed by so formidable an evil, public opinion asks a remedy from government, which does not cure it, perhaps, because it considers it incurable.

But notwithstanding it may be true that this vicious state of society cannot be cured altogether, it seems equally certain that there are circumstances which tend to aggravate it, and institutions whose influence renders it less fatal.

Various voices are raised in our time to indicate to government the path which is best to be pursued.

Some ask for the establishment of agricultural colonies in those parts of the French soil which have as yet been left uncultivated, and where the labour of convicts and paupers might be made useful and productive.

This system, which has met with great success in Belgium and Holland, is worthy of the particular attention of statesmen.

Others are particularly struck with the danger to which society is exposed from liberated convicts, whose corruption has been increased in prison. These believe that the evil would be remedied in a great degree, if the criminals were subjected during the time of their imprisonment to a penitentiary system, which, instead of further depraving them, made them better.

Some writers (one of whom has just received a prize from the French academy) being persuaded that the moral reformation of the criminal is impossible, and that his restoration to society cannot take place without imminent danger, think that it would be better if all convicts were transported out of France.

In the midst of these clashing opinions, some of which however are not irreconcilable, it appeared to us that it would be of use to introduce into this discussion some authentic documents on one of the important points in dispute.

Such has been the origin of the travels we have undertaken under the auspices of the French government.

Having been commissioned to examine into the theory and practice of the penitentiary system in the United States, we have accomplished this task; government has received our report; and we now owe it to our country to give an account of our labours.

If the results of our investigations shall be deemed valuable, it is chiefly owing to the generous hospitality with which we were received in the United States. Every where in that country, establishments of all kinds were thrown open to us, and all necessary materials were furnished with a readiness which awakened in us the liveliest feeling of gratitude.

The importance of our mission was understood in America, and the public functionaries of the highest order, as well as private gentlemen, vied with each other in facilitating its execution.

We have had no means of manifesting our sense of so much kindness. But if this book should find its way to America, we are happy to think that the inhabitants of the United States will find here a feeble expression of our heartfelt gratitude.

PART I

CHAPTER I.

Historical Outline of the Penitentiary System.



Origin of the Penitentiary System in 1786. — Influence of the Quakers. — Walnut Street Prison in Philadelphia; its faults and its advantages. — The Duke of La Rochefoucault-Liancourt. — Discipline of Walnut Street adopted by several states; its evil effects. — Origin of Auburn. — Pittsburgh. — Cherry-Hill. — Fatal experience of absolute solitary confinement: it is succeeded by the Auburn system, founded upon isolation and silence: success of this system in several states of the Union. — Wethersfield: foundation of Sing-Sing by Mr. Elam Lynds. — Institution of houses of refuge in the State of New York. — Pennsylvania abandons the system of absolute solitude without labour: new discipline of imprisonment combined with new penal laws. — States which have not yet made any reform in their prisons; in what this reform is incomplete in those states in which it exists. — Barbarity of some criminal laws in the United States. — Recapitulation.

THOUGH the penitentiary system in the United States is a new institution, its origin must be traced back to times already long gone by. The first idea of a reform in the American prisons, belongs to a religious sect in Pennsylvania. The Quakers, who abhor all shedding of blood; had always protested against the barbarous laws which the colonies inherited from their mother country. In 1786, their voice succeeded in finding due attention, and from this period, punishment of death, mutilation and the whip were successively abolished in almost all cases by the Legislature of Pennsylvania. [At present, punishment of death is pronounced by the Code of Pennsylvania, for murder in the first degree only. [It may not be amiss to refer the reader to an article on the Revised Code of Pennsylvania, in No. XXV, of the American Quarterly Review; which contains valuable information.] — TRANS.] A less cruel fate awaited the convicts from this period. The punishment of imprisonment was substituted for corporeal punishment, and the law authorized the courts to inflict solitary confinement in a cell during day and night, upon those guilty of capital crimes. It was then that the Walnut Street prison was established in Philadelphia. Here the convicts were classed according to the nature of their crimes, and separate cells were constructed for those whom the courts of justice had sentenced to absolute isolation: these cells also served to curb the resistance of individuals, unwilling to submit to the discipline of the prison. The solitary prisoners did not work. [These cells were or are still thirty in number, in the Walnut Street prison.]

This innovation was good but incomplete.

The impossibility of subjecting criminals to a useful classification, has since been acknowledged; and solitary confinement without labour has been condemned by experience. It is nevertheless just to say, that the trial of this theory has not been made long enough to be decisive. The authority given to the judges of Pennsylvania, by the law of April 5, 1790, and of March 22, to send criminals to the prison in Walnut Street, who formerly would have been sent to the different county jails, soon produced in this prison such a crowd of convicts, that the difficulty of classification increased in the same degree as the cells became insufficient.

To say the truth there did not yet exist a penitentiary system in the United States.

If it be asked why this name was given to the system of imprisonment which had been established, we would answer, that then as well as now, the abolition of the punishment of death was confounded in America, with the penitentiary system. People said — *instead of killing the guilty, our laws put them in prison; hence we have a penitentiary system.*

The conclusion was not correct. It is very true that the punishment of death applied to the greater part of crimes, is irreconcilable with a system of imprisonment; but this punishment abolished, the penitentiary system does not yet necessarily exist; it is further necessary, that the criminal whose life has been spared, be placed in a prison, whose discipline renders him better. Because, if the system, instead of reforming, should only tend to corrupt him still more, this would not be any longer a *penitentiary system*, but only a *had system of imprisonment*.

This mistake of the Americans has for a long time been shared in France. In 1794, the Duke de la Rochefoucauld-Liancourt, published an interesting notice on the prison of Philadelphia: he declared that this city had an excellent prison system, and all the world repeated it.

However, the Walnut Street prison could produce none of the effects which are expected from this system. It had two principal faults: it corrupted by contamination those who worked together. It corrupted by indolence, the individuals who were plunged into solitude.

The true merit of its founders was the abolition of the sanguinary laws of Pennsylvania, and by introducing a new system of imprisonment, the direction of public attention to this important point. Unfortunately that which in this innovation deserved praise, was not immediately distinguished from that which was untenable.

Solitude applied to the criminal, in order to conduct him to reformation by reflection, rests upon a philosophical and true conception. But the authors of this theory had not yet founded its application upon those means which alone could render it practical and salutary. Yet their mistake was not immediately perceived; and the success of Walnut Street prison boasted of in the United States still more than in Europe, biassed public opinion in favour of its faults, as well as its advantages.

The first state which showed itself zealous to imitate Pennsylvania, was that of New York, which in 1797, adopted both new penal laws and a new prison system.

Solitary confinement without labour, was admitted here as in Philadelphia; but, as in Walnut Street, it was reserved for those who especially were sentenced to undergo it by the courts of justice, and for those who opposed the established order of the prison. Solitary confinement, therefore, was not the ordinary system of the establishment; it awaited only those great criminals who, before the reform of the penal laws, would have been condemned to death. Those who were guilty of less offences were put indiscriminately together in the prison. They, different from the inmates of the solitary cells, had to work during the day; and the only disciplinary punishment which their keeper had a right to inflict, in case of breach of the order of the prison, was solitary confinement, with bread and water.

The Walnut Street prison was imitated by others.: Maryland, Massachusetts, Maine, New Jersey, Virginia, &c., adopted successively, the principle of solitary confinement, applied only to a certain class of criminals (a) in each of these states; the reform of criminal laws preceded that of the prisons.

Nowhere was this system of imprisonment crowned with the hoped-for success. In general it was ruinous to the public treasury; it never effected the reformation of the prisoners; every year the legislature of each state voted considerable funds towards the support of the penitentiaries, and the continued return of the same individuals into the prisons, proved the inefficiency of the system to which they were submitted.

Such results seem to prove the insufficiency of the whole system; however, instead of accusing the theory itself, its execution was attacked. It was believed that the whole evil resulted from the paucity of cells, and the crowding of the prisoners; and that the system, such as it was established, would be fertile in happy results, if some new

buildings were added to the prisons already existing. New expenses therefore, and new efforts were made.

Such was the origin of the Auburn prison, [1816.]

This prison, which has become so celebrated since, was at first founded upon a plan essentially erroneous; it limited itself to some classifications, and each of these cells was destined to receive two convicts: it was of all combinations the most unfortunate; it would have been better to throw together fifty criminals in the same room, than to separate them two by two. This inconvenience was soon felt, and in 1819 the Legislature of the State of New York, ordered the erection of a new building at Auburn, (the northern wing) in order to increase the number of solitary cells. However, it must be observed, that no idea as yet existed of the system which has prevailed since. It was not intended to subject all the convicts to the system of cells; but its application was only to be made to a greater number. At the same time the same theories produced the same trials in Philadelphia, where the little success of the Walnut Street prison would have convinced the inhabitants of Pennsylvania of its inefficiency, if the latter, like the citizens of the State of New York, had not been led to seek in the faults of execution, a motive for allowing the principle to be correct.

In 1817, the Legislature of Pennsylvania decreed the erection of the penitentiary at Pittsburgh, for the western counties; and in 1821, that of the penitentiary of Cherry-Hill, for the city of Philadelphia and the eastern counties.

The principles to be followed in the construction of these two establishments were, however, not entirely the same as those on which the Walnut Street prison had been erected. In the latter, classification formed the predominant system, to which solitary confinement was but secondary. In the new prisons the classifications were abandoned, and a solitary cell was to be prepared for each convict. The criminal was not to leave his cell day or night, and all labour was denied to him in his solitude. Thus absolute solitary confinement, which in Walnut Street was but accidental, was now to become the foundation of the system adopted for Pittsburgh and Cherry-Hill.

The experiment which was to be made, promised to be decisive: no expense was spared to construct these new establishments worthy of their object, and the edifices which were elevated, resembled prisons less than palaces.

In the meantime, before even the laws which ordered their erection, were executed, the Auburn prison had been tried in the State of New York. Lively debates ensued on this occasion, in the legislature; and the public was impatient to know the result of the new trials, which had just been made.

The northern wing having been nearly finished in 1821, eighty prisoners were placed there, and a separate cell was given to each. This trial, from which so happy a result had been anticipated, was fatal to the greater part of the convicts: in order to reform them, they had been submitted to complete isolation; but this absolute solitude, if nothing interrupt it, is beyond the strength of man; it destroys the criminal without intermission and without pity; it does not reform, it kills. (b)

The unfortunates, on whom this experiment was made, fell into a state of depression, so manifest, that their keepers were struck with it; their lives seemed in danger, if they remained longer in this situation; five of them, had already succumbed during a single year;(c) their moral state was not less alarming; one of them had become insane; another, in a fit of despair, had embraced the opportunity when the keeper brought him something, to precipitate himself from his cell, running the almost certain chance of a mortal fall.

Upon similar effects the system was finally judged. The Governor of the State of New York pardoned twenty-six of those in solitary confinement; the others to whom

this favour was not extended, were allowed to leave the cells during day, and to work in the common work-shops of the prison. From this period, (1823) the system of unmodified isolation ceased entirely to be practised at Auburn: proofs were soon afforded that this system, fatal to the health of the criminals, was likewise inefficient in producing their reform. Of twenty-six convicts, pardoned by the governor, fourteen returned a short time after into the prison, in consequence of new offences.

This experiment, so fatal to those who were selected to undergo it, was of a nature to endanger the success of the penitentiary system altogether. After the melancholy effects of isolation, it was to be feared that the whole principle would be rejected: it would have been a natural re-action. The Americans were wiser: the idea was not given up, that the solitude, which causes the criminal to reflect, exercises a beneficial influence; and the problem was, to find the means by which the evil effect of total solitude could be avoided without giving up its advantages. It was believed that this end could be attained, by leaving the convicts in their cells during night, and by making them work during the day, in the common work-shops, obliging them at the same time to observe absolute silence.

Messrs. Allen, Hopkins, and Tibbits, who, in 1824, were directed by the Legislature of New York to inspect the Auburn prison, found this new discipline established in that prison. They praised it much in their report, and the Legislature sanctioned this new system by its formal approbation.

Here an obscurity exists which it has not been in our power to dissipate. We see the renowned Auburn system suddenly spring up, and proceed from the ingenious combination of two elements, which seem at first glance incompatible, isolation and re-union. But that which we do not clearly see, is the creator of this system, of which nevertheless some one must necessarily have formed the first idea. Does the State of New York owe it to Governor Clinton, whose name in the United States is connected with so many useful and beneficial enterprises?

Does the honour belong to Mr. Cray, one of the directors of Auburn, to whom Judge Powers, who himself was at the head of that establishment, seems to attribute the merit?

Lastly, Mr. Elam Lynds, who has contributed so much to put the new system into practice, does the glory also of the invention belong to him?

We shall not attempt to solve this question, interesting to the persons whom we have mentioned, and the country to which they belong, but of little importance to us.

In fine, does not experience teach us that there are innovations, the honour of which belongs to nobody in particular, because they are the effects of simultaneous efforts, and of the progress of time?

The establishment of Auburn has, since its commencement, obtained extraordinary success. It soon excited public attention in the highest degree. A remarkable revolution took place at that time in the opinions of many; the direction of a prison, formerly confided to obscure keepers, was now sought for by persons of high standing; and Mr. Elam Lynds, formerly a Captain in the army of the United States, and Judge Powers, a magistrate of rare merit, were seen, with honour to themselves, filling the office of directors of Auburn.

However, the adoption of the system of cells for all convicts in the state of New York, rendered the Auburn prison insufficient, as it contained but five hundred and fifty cells after all the successive additions which it had received; [In 1823, there were in Auburn but three hundred and eighty cells. On April 12th, 1824, the Legislature ordered the construction of sixty-two more cells.] the want of a new prison, therefore,

was felt. It was then that the plan of SingSing was resolved upon by the legislature (in 1825,) and the way in which it was executed, is of a kind that deserves to be reported.

Mr. Elam Lynds, who had made his trials at Auburn, of which he was the superintendent, left this establishment; took one hundred convicts, accustomed to obey, with him, led them to the place where the projected prison was to be erected; and there, encamped on the bank of the Hudson, without a place to receive, and without walls to lock up his dangerous companions; he sets them to work, making of every one a mason or a carpenter, and having no other means to keep them in obedience, than the firmness of his character and the energy of his will.

During several years, the convicts, whose number was gradually increased, were at work in building their own prison; and at present the penitentiary of Sing-Sing contains one thousand cells, all of which have been built by their criminal inmates. At the same time (in 1825,) an establishment of another nature was reared in the city of New York, but which occupies not a less important place among the improvements, the history of which we attempt to trace. We mean the house of refuge, founded for juvenile offenders.

There exists no establishment, the usefulness of which, experience has warranted in a higher degree. It is well known that most of those individuals on whom the criminal law inflicts punishments, have been unfortunate before they became guilty. Misfortune is particularly dangerous for those whom it befalls in a tender age; and it is very rare that an orphan without inheritance and without friends, or a child abandoned by its parents, avoids the snares laid for his inexperience, and does not pass within a short time from misery to crime. Affected by the fate of juvenile delinquents, several charitable individuals of the city of New York [I shall show, in a note further on, that houses of refuge were first established in Germany, at least in modern times. But the founders of the New York house of refuge, it is nevertheless true, were unacquainted with their existence in Germany, and were led to this re-invention by the imperious wants of their own community] conceived the plan of a house of refuge, destined to serve as an asylum, and to procure for them an education and the means of existence, which fortune had refused. Thirty thousand dollars were the produce of a first subscription; thus by the sole power of a charitable association, an establishment eminently useful, was founded, which, perhaps, is still more important than the penitentiaries, because the latter punish crime, whilst the house of refuge tends to prevent it.

The experiment made at Auburn in the state of New York, (the fatal effects of isolation without labour,) did not prevent Pennsylvania from continuing the trial of solitary confinement; and in the year 1827, the penitentiary of Pittsburgh began to receive prisoners. Each one was shut up, day and night, in a cell, in which no labour was allowed to him. This solitude, which in principle was to be absolute, was not such in fact. The construction of this penitentiary is so defective, that it is very easy to hear in one cell what is going on in another; so that each prisoner found in the communication with his neighbour a daily recreation, i.e. an opportunity of inevitable corruption; and as these criminals did not work, we may say that their sole occupation consisted in mutual corruption. This prison, therefore, was worse than even that of Walnut street; because, owing to the communication with each other, the prisoners at Pittsburgh were as little occupied with their reformation, as those at Walnut Street; and whilst the latter indemnified society in a degree by the produce of their labour, the others spent their whole time in idleness, injurious to themselves, and burthensome to the public treasury, (d)

The bad success of this establishment proved nothing against the system which had called it into existence, because defects in the construction of the prison, rendered the execution of the system impossible: nevertheless, the advocates of the theories on which it was founded, began to grow cool. This impression became still more general in Pennsylvania, when the melancholy effects caused by solitude without labour in the Auburn prison, became known, as well as the happy success of the new discipline, founded on isolation by night, with common labour during the day. [Not only in the Auburn prison, solitary confinement without labour, produced fatal effects on the mind and body of the prisoners. The prisons of Maryland, Maine, Virginia, and New Jersey, did not obtain happier results in the latter prison, ten individuals are mentioned as having been killed by solitary confinement. See the Fifth Report of the Boston Prison Discipline Society, page 422. In Virginia, when the governor ceased to pardon convicts; it was never the case that any one of them survived an attack of disease.

(Sec Report of the Commissioners for revising the Penal Code of Pennsylvania, page 30.)

So far the authors. Without the least intention to advocate solitary confinement without labour, we cannot help expressing some surprise at these results, as it has been, from times immemorial, not uncommon on the continent of Europe, to condemn certain prisoners, i.e. high offenders against the government, suspected of peculiar talent for intrigue, to perpetual solitary confinement: and of how many are we not told that lived for a long series of years in this wretched state! — TRANS.]

Warned by such striking results, Pennsylvania' was fearful she had pursued a dangerous course; she felt the necessity of submitting to a new investigation the question of solitary imprisonment without labour, practised at Pittsburgh, and introduced into the penitentiary of Cherry-Hill, the construction of which was already much advanced.

The legislature of this state, therefore, appointed a committee in order to examine which was the better system of imprisonment. Messrs. Charles Shaler, Edward King; and T. I. Wharton, commissioners charged with this mission, have exhibited, in a very remarkable report, the different systems then in practice, (December 20, 1827,) and they conclude the discussion by recommending the new Auburn discipline, which they pronounce the best. [This report is one of the most important legislative documents in existence of the American prisons. It has been in Europe, the subject of a special and thorough study of certain publicists.]

The authority of this inquiry had a powerful effect on public opinion; it however met with powerful opposition: Roberts Vaux, in Pennsylvania, Edward Livingston, in Louisiana, continued to support the system of complete solitude for criminals. The latter, whose writings are imbued with so elevated a philosophy, had prepared a criminal code, and a code of Prison Discipline for Louisiana, his native state. His profound theories, little understood by those for whom they were destined, had more success in Pennsylvania, for which they had not been intended. In this superior work, Mr. Livingston admitted, for most cases, the principle of labour of the convicts: and, altogether, he showed himself less the advocate of the Pittsburgh prison, than the adversary of the Auburn system; he acknowledged the good discipline of the latter, but powerfully opposed himself to corporal punishment used to maintain it. Mr. Livingston, and those who supported the same doctrines, had to combat a powerful fact: this was the uncertainty of their theories, not yet tested, and the proven success of the system they attacked. Auburn went on prospering: everywhere its wonderful effects were praised, and they were found traced each year with great spirit, in a work justly celebrated in America, and which has essentially co-operated to bring public

opinion in the United States, on the penitentiary system, to that point where it now is: we mean the annual publications of the Prison Discipline Society at Boston. These annual reports — the work of Mr. Louis Dwight, give a decided preference to the Auburn system, (e)

All the states of the Union were attentive witnesses of the controversy respecting the two systems.

In this fortunate country, which has neither troublesome neighbours, who disturb it from without, nor internal dissensions which distract it within, nothing more is necessary, in order to excite public attention in the highest degree, than an essay on some principle of social economy. As the existence of society is not put in jeopardy, the question is not how to live, but how to improve.

Pennsylvania was, perhaps, more than any other state, interested in the controversy: the rival of New York, it was natural she should show herself jealous to retain, in every respect, the rank to which her advanced civilization entitles her among the most enlightened states of the Union.

She adopted a system which at once agreed with the austerity of her manners, and her philanthropical sensibility; she rejected solitude without labour, the fatal effects of which experience had proved every where, and she retained the absolute separation of the prisoners — a severe punishment, which, in order to be inflicted, needs not the support of corporal chastisement. The penitentiary of Cherry-Hill, founded on these principles, is therefore a combination of Pittsburgh and Auburn. Isolation during night and day, has been retained from the Pittsburgh system: and, into the solitary cell, the labour of Auburn has been introduced. (f)

This revolution in the prison discipline of Pennsylvania, was immediately followed by a general reform of her criminal laws. All punishments were made milder; the severity of solitary imprisonment permitted an abridgment of its duration; capital punishment was abolished in all cases, except that of premeditated murder. (g)

Whilst the states of New York and Pennsylvania made important reforms in their laws, and each adopted a different system of imprisonment, the other states of the Union did not remain inactive, in presence of the grand spectacle before them.

Since the year 1825, the plan of a new prison on the Auburn model, has been adopted by the legislature of Connecticut; and the penitentiary at Wethersfield has succeeded the old prison of Newgate.

In spite of the weight which Pennsylvania threw into the balance, in favour of absolute solitude with labour, the Auburn system, i.e. common labour during the day, with isolation during night, continued to obtain a preference; Massachusetts, Maryland, Tennessee, Kentucky, Maine, and Vermont, have gradually adopted the Auburn plan, and have taken the Auburn prison as a model for those which they have caused to be erected. [Since Messrs. Beaumont and Toqueville visited our country, the legislature of New Jersey has made provisions for the erection of a state-prison on the Pennsylvania principle, which the reader is requested to bear in mind, in perusing several subsequent passages of this work. — TRANS.] (h)

Several states have not stopped here, but have also founded houses of refuge for juvenile offenders, as an addition, in some measure, to the penitentiary system, in imitation of New York. These latter establishments have been founded in Boston in 1826, and in Philadelphia in 1828. There is every indication that Baltimore also, will soon have its house of refuge.

It is easy to foresee, that the impulse of reform given by New York and Pennsylvania, will not remain confined to the states mentioned above.

From the happy rivalry which exists among all the states of the Union, each state follows the reforms which have been effected by the others, and shows itself impatient to imitate them.

It would be wrong to judge all the United States by the picture which we have presented of the improvements adopted by some of them.

Accustomed as we are to see our central government attract every thing, and propel in the various provinces all the parts of the administration in a uniform direction, we sometimes suppose that the same is the case in other countries; and comparing the centralization of government at Washington with that at Paris, the different states of the Union to our departments, we are tempted to believe that innovations made in one state, take, of necessity, place in the others. There is, however, nothing like it in the United States.

These states, united by a federal tie into one family, are in respect to every thing which concerns their common interests, subjected to one single authority. But besides these general interests, they preserve their entire individual independence, and each of them is sovereign master to rule itself according to its own pleasure. We have spoken of nine states which have adopted a new system of prisons; there are fifteen more which have made as yet no change.

In these latter, the ancient system prevails in its whole force; the crowding of prisoners, confusion of crimes, ages, and sometimes sexes, mixture of indicted and convicted prisoners, of criminals and debtors, guilty persons and witnesses; considerable mortality; frequent escapes; absence of all discipline; no silence which leads the criminals to reflection; no labour which accustoms them to an honest mode of subsistence; insalubrity of the place which destroys health; ignominy of the conversations which corrupt; idleness that depraves; the assemblage, in one word, of all vices and all immoralities — such is the picture offered by the prisons which have not yet entered into the way of reform. (i)

By the side of one state, the penitentiaries of which might serve as a model, we find another, whose jails present the example of every thing which ought to be avoided. Thus the State of New York is without contradiction one of the most advanced in the path of reform, while New Jersey, which is separated from it but by a river, has retained all the vices of the ancient system.

Ohio, which possesses a penal code remarkable for the mildness and humanity of its provisions, has barbarous prisons. We have deeply sighed when at Cincinnati, visiting the prison; we found half of the imprisoned charged with irons, and the rest plunged into an infected dungeon; and are unable to describe the painful impression which we experienced, when, examining the prison of New Orleans, we found men together with hogs, in the midst of all odours and nuisances. In locking up the criminals, nobody thinks of rendering them better, but only of taming their malice; they are put in chains like ferocious beasts; and instead of being corrected, they are rendered brutal.

If it is true that the penitentiary system is entirely unknown in that part which we mentioned, it is equally true that this system is incomplete in those states even where it is in vigour. Thus at New York, at Philadelphia, and Boston, there are new prisons for convicts, whose punishment exceeds one or two years' imprisonment; but establishments of a similar nature do not exist to receive individuals who are sentenced for a shorter time, or who are indicted only. In respect to the latter, nothing has been changed; disorder, confusion, mixture of different ages and moral characters, all vices of the old system still exist for them: we have seen in the house of arrest in New York (Bridewell) more than fifty indicted persons in one room. These arrested

persons are precisely those for whom well regulated prisons ought to have been built. It is easy in fact to conceive, that he who has not yet been pronounced guilty, and he who has committed but a crime or misdemeanor comparatively slight, ought to be surrounded by much greater protection than such as are more advanced in crime, and whose guilt has been acknowledged.

Arrested persons are sometimes innocent and always supposed to be so. How is it that we should suffer them to find in the prison a corruption which they did not bring with them?

If they are guilty, why place them first in a house of arrest, fitted to corrupt them still more, except to reform them afterwards in a penitentiary, to which they will be sent after their conviction? (j)

There is evidently a deficiency in a prison system which offers anomalies of this kind.

These shocking contradictions proceed chiefly from the want of unison in the various parts of government in the United States.

The larger prisons (state-prisons) corresponding to our *maisons centrales*, belong to the state, which directs them; after these follow the county jails, directed by the county; and at last the prisons of the city, superintended by the city itself.

The various branches of government in the United States being almost as independent of each other, as the states themselves, it results that they hardly ever act uniformly and simultaneously. Whilst one makes a useful reform in the circle of its powers, the other remains inactive, and attached to ancient abuses.

We shall see below, how this independence of the individual parts, which is injurious to the uniform action of all their powers, has nevertheless a beneficial influence, by giving to each a more prompt and energetic progress in the direction which it follows freely and unimpelled.

We shall say nothing more of the defective parts in the prison system in the United States: if at some future period France shall imitate the penitentiaries of America, the most important thing for her will be to know those which may serve as models. The new establishments then, will form the only object of our further inquiry.

We have seen, in the preceding remarks, that few states have as yet changed entirely their system of imprisonment; the number of those which have modified their penal laws is still less. Several among them yet possess part of the barbarous laws which they have received from England.

We shall not speak of the Southern states, where slavery still exists; in every place where one half of the community is cruelly oppressed by the other, we must expect to find in the law of the oppressor, a weapon always ready to strike nature which revolts or humanity that complains. Punishment of death and stripes — these form the whole penal code for the slaves. But if we throw a glance at those states even which have abolished slavery, and which are most advanced in civilization, we shall see this civilization uniting itself, in some, with penal laws full of mildness, and in others, with all the rigour of a code of Draco.

Let us but compare the laws of Pennsylvania with those of New England, which is, perhaps, the most enlightened part of the American Union. In Massachusetts, there are ten different crimes punished by death — among others, rape and burglary. Maine, Rhode Island, and Connecticut, count the same number of capital crimes. Among these laws, some contain the most degrading punishments, such as the pillory; others revolting cruelties, as branding and mutilation. There are also some which order fines equal to confiscations. Whilst we find these remains of barbarism in some states, with an old population, there are others, which, risen since yesterday, have banished from

their laws all cruel punishments not called for by the interest of society. Thus, Ohio, which certainly is not as enlightened as New England, has a penal code much more humane than those of Massachusetts or Connecticut.

Close by a state where the reform of the penal laws seems to have arrived at its summit, we find another, the criminal laws of which are stamped with all the brutalities of the ancient system. It is thus that the States of Delaware and New Jersey, so far behind in the path of improvement, border on Pennsylvania, which, in this respect, marches at the head of all others.

We should forget the object of our report were we to dwell any longer on this point. We were obliged to present a sketch of the penal legislation of the United States, because it exercises a necessary influence on the question before us.

In fact it is easy to conceive to what point the punishments which degrade the guilty, are incompatible with a penitentiary system, the object of which is to reform them. How can we hope to awaken the moral sense of an individual who carries on his body the indelible sign of infamy, when the mutilation of his limbs reminds others incessantly of his crime, or the sign imprinted on his forehead, perpetuates its memory?

Besides, let us not blame these people for advancing slowly on the path of innovation. Ought not similar changes to be the work of time, and of public opinion? There are in the United States a certain number of philosophical minds, who, full of theories and systems, are impatient to put them into practice; and if they had the power themselves to make the law of the land, they would efface with one dash, all the old customs, and supplant them by the creations of their genius, and the decrees of their wisdom. Whether right or wrong the people do not move so quick. They consent to changes, but they wish to see them progressive and partial. (k) This prudent and reserved reform, effected by a whole nation, all of whose customs are practical, is, perhaps, more beneficial than the precipitated trials which would result, had the enthusiasm of ardent minds and enticing theories free play.

Must we not ardently wish, that the last traces of such barbarism should disappear from all the United States, and particularly from those which have adopted the penitentiary system, with which they are irreconcilable, and whose existence renders them still more shocking?

Whatever may be the difficulties yet to be overcome, we do not hesitate to declare that the cause of reform and of progress in the United States, seem to us certain and safe.

Slavery, the shame of a free nation, is expelled every day from some districts over which it held its sway; and those persons themselves who possess most slaves, are convinced that slavery will not last much longer.

Every day punishments which wound humanity, become supplanted by milder ones; and in the most civilized states of the north, where these punishments continue in the written laws, their application has become so rare that they are to be considered as fallen into disuse.

The impulse of improvement is given. Those states which have as yet done nothing, are conscious of their deficiency; they envy those which have preceded them in this career, and are impatient to imitate them. [Since the authors visited our country, New Jersey has made provisions for a State prison, on the Pennsylvania principle, and New Hampshire for another at Concord, on the Auburn principle. — TRANS.]

Finally, it is a fact worth remarking, that the modification of the penal laws and that of prison discipline, are two reforms intimately associated with each other, and never separated in the United States.

Our special task is not to enlarge on the first; the second alone shall fix our attention.

The various states in which we have found a penitentiary system, pursue all the same end: the amelioration of the prison discipline. But they employ different means to arrive at their object. These different means have formed the subject of our inquiry.

CHAPTER II.

Discussion. — Object of the Penitentiary System. — First section: — what are the fundamental principles of this system? — Two distinct systems; Auburn and Philadelphia. — Examination of the two systems. — In what they agree: in what they differ.



THE PENITENTIARY SYSTEM in the proper acceptance of the word, relates only to individuals condemned and subjected to the punishment of imprisonment for the expiation of their crime.

In a less confined sense, it may be extended to all arrested persons, whether their arrest precedes or follows the judgment: that is to say, whether these persons are arrested as suspected or indicted for a crime, or as condemned for having committed it; in this wider acceptance, the penitentiary system comprehends prisons of all kinds, state and other prisons, houses of arrest and refuge, &c., &c.

In this latter sense we shall use it We have already said that in the United States those prisons which correspond to our houses of arrest, (*maisons d'arret*) that is to say, those which are destined for persons provisionally arrested, and for individuals sentenced to a short imprisonment, have undergone no reform as yet. Consequently, we shall not speak of them. We should be able to present in this respect but a theory; and it is practical observations with which we have, above all, to occupy ourselves.

We shall therefore, immediately direct our attention to the penitentiaries, properly so called, which contain in the United States, those convicts, who, according to our laws, would be sent to the “central houses of correction,” of “detention,” and to the “bagnes.”

The punishment of imprisonment in the different states in which it is pronounced, is not varied as by our laws. With us a distinction is made between simple imprisonment, “*reclusion*” detention, and hard labour; each of these punishments has certain traits which are peculiar to it; imprisonment in the United States has a uniform character; it differs only in its duration.

It is divided into two principal classes: 1. Imprisonment from one month to one or two years, applied to breaches of the laws of the police, and to lighter offences (*délits*); 2. Imprisonment from two years to twenty or for life, which serves to punish crimes of a graver character. It is for the convicts suffering the second class of punishment, that in the United States a penitentiary system exists:

1. In what consists this system, and what are its fundamental principles?
2. How is it put into practice?
3. By what disciplinary means is it maintained?
4. What results have been obtained in respect to reformation of the prisoners?
5. What have been its effects in a financial respect?
6. What information can we obtain from this system for the amelioration of our prisoners?

These are the principal questions respecting which we shall give a summary of our observations and inquiries.

Having accomplished this task, we shall conclude our report by an examination of the houses of refuge for juvenile offenders: these establishments are rather schools than prisons, but they form, nevertheless, an essential part of the penitentiary system,

since the regulations to which these young prisoners are subjected, have for their object, to punish those who have been declared guilty, and aim at the reformation of all.

SECTION I.

In what consists the Penitentiary System, and what are its fundamental principles?

WE find in the United States two distinctly separate systems: the system of Auburn and that of Philadelphia.

Sing-Sing, in the State of New York; Wethersfield, in Connecticut; Boston, in Massachusetts; Baltimore, in Maryland; have followed the model of Auburn.

On the other side, Pennsylvania stands quite alone.

The two systems opposed to each other on important points, have, however, a common basis, without which no penitentiary system is possible; this basis is the isolation of the prisoners. (l)

Whoever has studied the interior of prisons and the moral state of their inmates, has become convinced that communication between these persons renders their moral reformation impossible, and becomes even for them the inevitable cause of an alarming corruption. This observation, justified by the experience of every day, has become in the United States an almost popular truth; and the publicists who disagree most respecting the way of putting the penitentiary system into practice, fully agree upon this point, that no salutary system can possibly exist without the separation of the criminals.

For a long time it was believed that, in order to remedy the evil caused by the intercourse of prisoners with each other, it would be sufficient to establish in the prison, a certain number of classifications. But after having tried this plan, its insufficiency has been acknowledged. There are similar punishments and crimes called by the same name, but there are no two beings equal in regard to their morals; and every time that convicts are put together, there exists necessarily a fatal influence of some upon others, because, in the association of the wicked, it is not the less guilty who act upon the more criminal, but the more depraved who influence those who are less so.

We must therefore, impossible as it is to classify prisoners, come to a separation of all. (m)

This separation, which prevents the wicked from injuring others, is also favourable to himself.

Thrown into solitude he reflects. Placed alone, in view of his crime, he learns to hate it; and if his soul be not yet surfeited with crime, and thus have lost all taste for any thing better, it is in solitude, where remorse will come to assail him.

Solitude is a severe punishment, but such a punishment is merited by the guilty. Mr. Livingston justly remarks, that a prison, destined to punish, would soon cease to be a fearful object, if the convicts in it could entertain at their pleasure those social relations in which they delighted, before their entry into the prison.

Yet, whatever may be the crime of the guilty prisoner, no one has the right to take life from him, if society decree merely to deprive him of his liberty. Such, however, would be the result of absolute solitude, if no alleviation of its rigours were offered.

This is the reason why labour is introduced into the prison. Far from being an aggravation of the punishment, it is a real benefit to the prisoner.

But even if the criminal did not find in it a relief from his sufferings, it nevertheless would be necessary to force him to it. It is idleness which has led him to crime; with employment he will learn how to live honestly.

Labour of the criminals is necessary still under another point of view: their detention, expensive for society if they remain idle, becomes less burthensome if they labour.

The prisons of Auburn, Sing-Sing, Wethersfield, Boston, and Philadelphia, rest then upon these two united principles, solitude and labour. These principles, in order to be salutary, ought not to be separated: the one is inefficient without the other. In the ancient prison of Auburn, isolation without labour has been tried, and those prisoners who have not become insane or did not die of despair, have returned to society only to commit new crimes.

In Baltimore, the system of labour without isolation is trying at this moment, and seems not to promise happy results.

Though admitting one-half of the principle of solitude, the other half is rejected; the penitentiary of this city contains a number of cells equal to that of the prisoners who are locked up at night; but during day, they are permitted to communicate freely with each other. Certainly separation during night is the most important; but it is not sufficient. The intercourse of criminals is necessarily of a corrupting nature; and this intercourse must be prevented if we wish to protect the prisoners from mutual contagion. (n)

Thoroughly convinced of these truths, the founders of the new penitentiary at Philadelphia, thought it necessary that each prisoner should be secluded in a separate cell during day as well as night.

They have thought that absolute separation of the criminals can alone protect them from mutual pollution, and they have adopted the principle of separation in all its rigour. According to this system, the convict, once thrown into his cell, remains there without interruption, until the expiration of his punishment: he is separated from the whole world; and the penitentiaries, full of malefactors like himself, but every one of them entirely isolated, do not present to him even a society in the prison; if it is true that in establishments of this nature, all evil originates from the intercourse of the prisoners among themselves, we are obliged to acknowledge that nowhere is this vice avoided with greater safety than at Philadelphia, where the prisoners find themselves utterly unable to communicate with each other; and it is incontestable that this perfect isolation secures the prisoner from all fatal contamination.

As solitude is in no other prison more complete than in Philadelphia, nowhere, also, is the necessity of labour more urgent. At the same time, it would be inaccurate to say, that in the Philadelphia penitentiary labour is imposed; we may say with more justice that the favour of labour is granted. When we visited this penitentiary, we successively conversed with all its inmates. (o) There was not a single one among them who did not speak of labour with a kind of gratitude, and who did not express the idea that without the relief of constant occupation, life would be insufferable.

What would become, during the long hours of solitude, without this relief, of the prisoner, given up to himself, a prey to the remorse of his soul and the terrors of his imagination? Labour gives to the solitary cell an interest; it fatigues the body and relieves the soul.

It is highly remarkable, that these men, the greater part of whom have been led to crime by indolence and idleness, should be constrained by the torments of solitude, to find in labour their only comfort: by detesting idleness, they accustom themselves to hate the primary cause of their misfortune; and labour, by comforting them, makes

them love the only means, which when again free, will enable them to gain honestly their livelihood.

The founders of the Auburn prison acknowledged also the necessity of separating the prisoners, to prevent all intercourse among themselves, and to subject them to the obligation of labour; but they follow a different course in order to arrive at the same end.

In this prison, as well as in those founded upon the same model, the prisoners are locked up in their solitary cells at night only. During day they work together in common workshops, and as they are subjected to the law of rigorous silence, though united, they are yet in fact isolated. Labour in common and in silence forms then the characteristic trait which distinguishes the Auburn system from that of Philadelphia.

Owing to the silence to which the prisoners are condemned, this union of the prisoners, it is asserted, offers no inconvenience, and presents many advantages.

They are united, but no moral connexion exists among them. They see without knowing each other. They are in society without any intercourse; there exists among them neither aversion nor sympathy. The criminal, who contemplates a project of escape, or an attempt against the life of his keepers, does not know in which of his companions he may expect to find assistance. Their union is strictly material, or, to speak more exactly, their bodies are together, but their souls are separated; and it is not the solitude of the body which is important, but that of the mind. At Pittsburgh, the prisoners, though separated, are not alone, since there exist moral communications among them. At Auburn, they are really isolated, though no wall separates them. [Our opinion respecting this isolation and some other points connected with the Auburn prison is given in the article on the Pennsylvania penitentiary system, appended to this work. — TRANS.]

Their union in the work-shops has, therefore, nothing dangerous: it has, on the contrary, it is said, an advantage peculiar to it, that of accustoming the prisoners to obedience.

What is the principal object of punishment in relation to him who suffers it? It is to give him the habits of society, and first to teach him to obey. The Auburn prison has, on this point, its advocates say, a manifest advantage over that of Philadelphia.

Perpetual seclusion in a cell, is an irresistible fact which curbs the prisoner without a struggle, and thus deprives altogether his submission of a moral character; locked up in this narrow space, he has not, properly speaking, to observe a discipline; if he works, it is in order to escape the weariness which overwhelms him: in short, he obeys much less the established discipline than the physical impossibility of acting otherwise.

At Auburn, on the contrary, labour instead of being a comfort to the prisoners, is, in their eyes, a painful task, which they would be glad to get rid of. In observing silence, they are incessantly tempted to violate its law. They have some merit in obeying, because their obedience is no actual necessity. It is thus that the Auburn discipline gives to the prisoners the habits of society which they do not obtain in the prisons of Philadelphia. (p)

We see that silence is the principal basis of the Auburn system; it is this silence which establishes that moral separation between all prisoners, that deprives them of all dangerous communications, and only leaves to them those social relations which are inoffensive.

But here we meet with another grave objection against this system; the advocates of the Philadelphia system say, that to pretend to reduce a great number of collected

malefactors to absolute silence, is a real chimera; and that this impossibility ruins from its basis, the system of which silence is the only foundation.

We believe that this reproach is much exaggerated. Certainly we cannot admit the existence of a discipline carried to such a degree of perfection, that it guaranties rigorous observation of silence among a great number of assembled individuals, whom their interest and their passions excite to communicate with each other. We may say, however, that if in the prisons of Auburn, Sing-Sing, Boston, and Wethersfield, silence is not always strictly observed, the cases of infraction are so rare that they are of little danger. Admitted as we have been into the interior of these various establishments, and going there at every hour of the day, without being accompanied by any body, visiting by turns the cells, the work-shops, the chapel and the yards, we have never been able to surprise a prisoner uttering a single word, and yet we have sometimes spent whole weeks in observing the same prison.

In Auburn, the building facilitates in a peculiar way the discovery of all contraventions of discipline. Each work-shop where the prisoners work, is surrounded by a gallery, from which they may be observed, though the observer remains unseen. We have often espied from this gallery the conduct of the prisoners, whom we did not detect a single time in a breach of discipline. There is moreover a fact which proves better than any other, how strictly silence is observed in these establishments; it is that which takes place at Sing-Sing. The prisoners are there occupied in breaking stones from the quarries, situated without the penitentiary; so that nine hundred criminals, watched by thirty keepers, work free in the midst of an open field, without a chain fettering their feet or hands. It is evident that the life of the keepers would be at the mercy of the prisoners, if material force were sufficient for the latter; but they want moral force. And why are these nine hundred collected malefactors less strong than the thirty individuals who command them? Because the keepers communicate freely with each other, act in concert, and have all the power of association; whilst the convicts separated from each other, by silence, have, in spite of their numerical force, all the weakness of isolation. Suppose for an instant, that the prisoners obtain the least facility of communication; the order is immediately the reverse; the union of their intellects effected by the spoken word, has taught them the secret of their strength; and the first infraction of the law of silence, destroys the whole discipline. The admirable order which prevails at Sing-Sing, and which silence alone is capable of maintaining, proves then that silence there is preserved. (q)

We have thus shown the general principle upon which the systems of Auburn and of Philadelphia rest: how are these principles put into action? How and by whom are the penitentiary establishments administered? What is the order of the interior, and what is the regulation of each day? This shall form the subject of the following section.

SECTION II.

Administration.

Administration. — Superintendents. — Clerk. — Inspectors. — By whom appointed. — Their privileges. — Their salary. — Importance of their choice. — Influence of public opinion. — Regulation of everyday. — Rising; going to sleep; labour; meals. — Nourishment. — No tippling-houses. — No reward for good conduct. — No unproductive labour. — Difficulty of labour in the solitary cells of Philadelphia. — Contract: in what it differs from the system established in France. — Absence of all individual earning, except at Baltimore.

THE administration of the prison is intrusted every where to a superintendent, whose authority is more or less extensive. He employs a clerk, charged with the financial business of the establishment. —

Superior to the superintendent, are three inspectors, charged with the general direction and moral surveillance of the prison, and under him is a number more or less considerable of inferior jailors.

At Auburn, Sing-Sing, Philadelphia, and Wethersfield, the superintendent is appointed by the inspectors; in Boston, the governor appoints him; in Connecticut, the inspectors are chosen by the legislature; in Massachusetts, by the governor, and in Pennsylvania, by the supreme court. Every where the power which appoints the superintendent, has the right to discharge him at pleasure.

The reader sees that the election of those persons who direct the penitentiary establishments, belongs to important authorities.

The nomination of the jailors belongs, in the prisons of SingSing, Wethersfield, Boston, and Philadelphia, to the superintendent himself; at Auburn they are chosen by the inspectors. The superintendents of all the prisons, with the single exception of that of Philadelphia, are bound to give sufficient security for their good behaviour. At Philadelphia and at Wethersfield, the office of inspector is without any compensation, and in the other prisons it is very trifling. The sum which they receive in Massachusetts is hardly equal to the expense incurred by visiting the prison. They are always chosen from among the inhabitants of the place. Persons distinguished by their standing in society, are desirous of filling this place; it is thus that we see in Philadelphia, among the inspectors of the penitentiary, Mr. Richards, mayor of the city, and in Boston, Mr. Grey, senator of Massachusetts.

Though the inspectors are not the immediate agents of the administration, they nevertheless direct it. They make the regulations, which the superintendent is charged to execute, and they constantly watch over this execution; they have even the power to modify them at their pleasure, according to the exigency of circumstances. In no case do they take part in the acts of the actual administration of the prison; the superintendent alone directs it; because he alone is answerable for it. They have every where the same legal authority; yet they do not exercise it in the same way, in all the prisons of which we treat. Thus at Sing-Sing, the superintendence of the inspectors appeared to us superficial, whilst at Auburn and at Wethersfield they took a much more active part in the affairs of the prison.

On the whole we may say, that the privileges of the inspectors are much more extended in law than in reality; whilst the superintendent, whose written authority is not very great, is yet the soul of the administration.

The most important place then in the prison, is without a doubt, that of the superintendent Generally it is intrusted in the penitentiaries of the United States, to honourable men, entitled by their talent to functions of this nature. It is thus that the Auburn prison has had for directors men like Mr. Elam Lynds, a former captain of the army; and Mr. Gershom Powers, a Judge of the State of New York. At Wethersfield, Mr. Pillsbury; at Sing-Sing, Mr. Robert Wiltze; at Boston, Mr. Austin, a captain in the navy, are all men distinguished by their knowledge and their capacity. To great probity and a deep sense of their duty they add much experience, and that perfect knowledge of men so necessary in their position. Among the superintendents of the American penitentiaries, we have especially to mention Mr. Samuel Wood, director of the new Philadelphia prison — a man of superior mind, who, influenced by religious sentiments, has abandoned his former career, in order to devote himself entirely to the success of an establishment so useful to his community.

The inferior agents, the under-wardens, are not so distinguished either for their standing in society or for talent. They are, however, in general, intelligent and honest men. Charged with superintending the labour in the work-shops, they have almost always a special and technical knowledge of the mechanical arts with which the prisoners occupy themselves. (r) —

The salary of the various officers, without being exorbitant, is nevertheless sufficient to furnish an honourable support to the superintendents, and to the others, all the necessaries of life. Besides, we must not judge of the merit of the prison officers by the amount of their salary. In Virginia, the superintendent of the Richmond prison receives annually 2000 dollars. Yet he is the director of one of the bad prisons in the United States; whilst the superintendent of Wethersfield, which is one of the good prisons, if it is not the best, receives but 1200 dollars. We may make the same observation by comparing the good prisons among each other; thus in Connecticut, the whole sum paid for the various salaries of the officers at Wethersfield, does not amount to more than 3713 dollars 33 cents for one hundred and seventy-four prisoners; whilst in that of Boston, the corresponding expenditure for two hundred and seventy-six prisoners, amounts to 13,171 dollars 55 cents; so that at Boston, where the number of the prisoners is not double those at Wethersfield, the expenses of the officers amount to three times and a half more than in the latter prison.

In investigating the organization of the new establishments, we have been struck with the importance which is attached to the choice of the individuals who direct them. As soon as the penitentiary system was adopted in the United States, the *personnel* changed its nature. For jailor of a *prison*, vulgar people only could be found; the most distinguished persons offered themselves to administer a *penitentiary* where a moral direction exists.

We have seen how the superintendents, however elevated their character and position may be, are subject to the control of a superior authority — the inspectors of the penitentiary. But above both, there is an authority stronger than all others, not written in the laws, but all-powerful in a free country; that of public opinion. The improvements in these matters having excited general attention, public opinion directed itself entirely toward this point, and it exercises without obstruction its vast influence.

There are countries in which public establishments are considered by the government as its own personal affair, so that it admits persons to them only according to its pleasure, just as a proprietor refuses at his pleasure admission into his house; they are a sort of administrative sanctuaries, into which no profane person can penetrate. These establishments, on the contrary, in the United States, are considered as belonging to all. The prisons are open to every one who chooses to inspect them, and every visitor may inform himself of the order which regulates the interior. There is no exception to this liberty but in the penitentiary at Philadelphia. Yet, if one wish, he may see the buildings and the interior of the establishment. It is only not permitted to see the prisoners, because the visits of the public would be in direct contradiction to the principle of absolute solitude, which forms the foundation of the system.

Instead of avoiding the inspection of the public, the superintendents and inspectors of the prisons ask for the examination and attention of all. Each year the inspectors give an account, either to the legislature or to the governor, of the financial situation of the prison, as well as of its moral state; they indicate existing abuses and improvements to be made. Their reports, printed by order of the legislatures, are immediately handed over to publicity and controversy; the papers, the number of which in that country is immense, republish them faithfully. Thus there is not a citizen

of the United States who does not know how the prisons of his country are governed, and who is not able to contribute to their improvement, either by his opinion or by his fortune. The general interest being thus excited, in each town, particular societies form themselves for the progress of prison discipline: all public establishments are carefully examined; all abuses are discovered and pointed out. If it is necessary to construct new prisons, individuals add their contributions to the funds furnished by the state, to meet the expenses. This general attention, a source of perpetual vigilance, produces with the officers of the prisons, an extraordinary zeal and extreme circumspection, which they would not be possessed of, were they placed in the shade. This surveillance of public opinion which constrains them in some respects, produces also its compensation, because it is this public opinion which elevates their functions, and makes them honourable, low and obscure as they formerly were.

We have seen the elements of which the prison is composed. Let us now examine how its organization operates. When the convict arrives in the prison, a physician verifies the state of his health. He is washed; his hair is cut, and a new dress, according to the uniform of the prison is given to him. In Philadelphia, he is conducted to his solitary cell, which he never leaves; there he works, eats, and rests; and the construction of this cell is so complete, that there is no necessity whatever to leave it.

At Auburn, at Wethersfield, and in the other prisons of the same nature, the prisoner is first plunged into the same solitude, but it is only for a few days, after which he leaves it, in order to occupy himself in the work-shops. With day-break, a bell gives the sign of rising; the jailors open the doors. The prisoners range themselves in a line, under the command of their respective jailors, and go first into the yard, where they wash their hands and faces, and from thence into the work-shops, where they go directly to work. Their labour is not interrupted until the hour of taking food. There is not a single instant given to recreation.

At Auburn, when the hours of breakfast or of dinner have arrived, labour is suspended, and all the convicts meet in the large refectory. At Sing-Sing, and in all other penitentiaries, they retire into their cells, and take their meals separately.

This latter regulation appeared to us preferable to that at Auburn. It is not without inconvenience and even danger, that so large a number of criminals can be collected in the same room; their union renders the discipline much more difficult.

In the evening, at the setting of the sun, labour ceases, and the convicts leave the work-shops to retire into their cells. Upon rising, going to sleep, eating, leaving the cells and going back to them, every thing passes in the most profound silence, and nothing is heard in the whole prison but the steps of those who march, or sounds proceeding from the work-shops. But when the day is finished, and the prisoners have retired to their cells, the silence within these vast walls, which contain so many prisoners, is that of death. We have often trod during night those monotonous and dumb galleries, where a lamp is always burning: we felt as if we traversed catacombs; there were a thousand living beings, and yet it was a desert solitude.

The order of one day is that of the whole year. Thus one hour of the convict follows with overwhelming uniformity the other, from the moment of his entry into the prison to the expiration of his punishment. Labour fills the whole day. The whole night is given to rest. As the labour is hard, long hours of rest are necessary; it is not denied to the prisoner between the moment of going to rest and that of rising. And before his sleep as after it, he has time to think of his solitude, his crime and his misery.

All penitentiaries it is true have not the same regulations; but all the convicts of a prison are treated in the same way. There is even more equality in the prison than in society.

All have the same dress, and eat the same bread. All work; there exists in this respect, no other distinction than that which results from a greater natural skill for one art than for another. On no condition is labour to be interrupted. The inconvenience of giving a task, after which the prisoner is at liberty to do nothing, has been acknowledged. It is essential for the convict as for the order of the prison, that he should labour without Interruption; for him, because idleness is fatal to him; for the prison, because according to the observation of Judge Powers, fifty individuals who work, are more easily watched than ten convicts doing nothing.

Their food is wholesome, abundant, but coarse it has to support their strength, but ought not to afford them any of those gratifications of the appetite, which are agreeable merely.

None can follow a diet different from that of the prison. Every kind of fermented liquor is prohibited; water alone is drunk here. The convict who might be possessed of treasures, would nevertheless live like the poorest among them; and we do not find in the American prisons, those eating houses which are found in ours, and in which the convict may buy every thing to gratify his appetite. The abuse of wine is there unknown, because the use of it is interdicted.

This discipline is at the same time moral and just. The place which society has assigned for repentance, ought to present no scenes of pleasure and debauch. And it is iniquitous to allow the opulent criminal, whose very riches increase his criminality, to enjoy himself in his prison by the side of the poor wretch whose misery extenuates his fault.

Application to labour and good conduct in prison, do not procure the prisoner any alleviation. Experience shows that the criminal who, whilst in society, has committed the most expert and audacious crimes, is often the least refractory in prison. He is more docile than the others, because he is more intelligent; and he knows how to submit to necessity when he finds himself without power to revolt. Generally he is more skilful and more active, particularly if an enjoyment, at no great distance, awaits him as the reward of his efforts; so that if we accord to the prisoners privileges resulting from their conduct in the prison, we run the risk of alleviating the rigour of imprisonment to that criminal who most deserves them, and of depriving of all favours those who merit them most.

Perhaps it would be impossible, in the actual state of our prisons, to manage them without the assistance of rewards granted for the zeal, activity, and talent of the prisoners. But in America, where prison discipline operates supported by the fear of chastisement, a moral influence can be dispensed with in respect to their management.

The interest of the prisoner requires that he should never be idle; that of society demands that he should labour in the most useful way. In the new penitentiaries none of those machines are found, which, in England, the prisoners set in motion without intelligence, and which occupy them merely in a mechanical way.

Labour is not only salutary because it is the opposite of idleness; but it is also contemplated that the convict, whilst he is at work, shall learn a business which may support him when he leaves the prison.

The prisoners therefore, are taught useful trades only; and among these, care is taken to choose such as are the most profitable, and the produce of which finds the easiest sale. (s)

The Philadelphia system has often been reproached with rendering labour by the prisoners impossible. It is certainly more economical and advantageous to make a certain number of workmen labour together in a common workshop, than to give each of them employment in a separate place. It is moreover true, that a great many arts cannot be pursued with advantage by a single workman in a narrow place; yet the penitentiary of Philadelphia shows that the various occupations which can be pursued by isolated men, are sufficiently numerous to occupy them usefully. The same difficulty is not met with in those prisons in which the convicts work in company. At Auburn and at Baltimore, a very great variety of arts is pursued. These two prisons offer the sight of vast manufactories which combine all useful occupations. At Boston and Sing-Sing the occupation of the convicts has, so far, been more uniform. In these two prisons, the greater part of the criminals are employed in cutting stones. Wethersfield offers, on a small scale, the same spectacle as Auburn.

In general, the labour of the prisoners is hired to a contractor, who gives a certain price for each day, and receives every thing manufactured by the convict.

There is an essential difference between this system and that which is practised in our prisons. With us the same person contracts for the food, clothing, labour, and sanitary department of the convicts — a system equally injurious to the convict and the discipline of the prison; to the convict, because the contractor, who sees nothing but a money affair in such a bargain, speculates upon the victuals as he does on the labour; if he loses upon the clothing, he indemnifies himself upon the food; and if the labour is less productive than he calculated upon, he tries to balance his loss by spending less for the support of the convicts, with which he is equally charged. This system is alike fatal to the good order of the prison. The contractor, regarding the convict as a labouring machine, thinks only how he can use him to the greatest advantage for himself; every thing appears allowable, in order to excite the zeal of the prisoner; and he cares little if the expenses of the convict are made to the injury of good order. The extent of his privileges, moreover, gives him an importance in the prison, which he ought not to have; it is therefore advisable to separate him as much as possible from the penitentiary, and to counteract his influence, if it cannot be neutralized entirely. (t)

It appeared to us, that the evil which we have thus pointed out, has been generally avoided in the new penitentiaries in the United States. In these establishments, neither the system of entire domestic management, nor that by contract, have been exclusively adopted.

The clothing and bedding of the convicts are generally furnished by the superintendent, who himself makes all the contracts relative to these subjects; he avoids many purchases, by causing the prisoners themselves to make the materials necessary for their clothing. At Auburn, Sing-Sing, and Boston, the prisoners are fed by contract, but this contract is not allowed to be made for more than one year. At Wethersfield, the prison itself provides this article. The contractor who, at Auburn, is charged with the food of the prisoners, is not the same who makes them work.

There exists also a different contractor for each branch of industry; the contracts thus being multiplied, the contractor cannot obtain in the prison more than a limited and passing influence. At Wethersfield, the government of the prison not only nourishes and maintains the convicts without the assistance of contract, but it also realizes the value of the greater part of the labour.

In all these establishments, the contractor cannot, under any pretext, interfere with the internal discipline of the prison, nor influence in the least degree its regulations. He cannot hold any conversation with the prisoners, except in order to teach them that

art, with which he is charged to instruct them; and can only do this in, the presence and with the consent of one of the jailors.

In spite of these precautions, the presence of the contractor or his agents in the prisons has been found to be not without its inconvenience. Formerly the Auburn prison managed itself all its affairs; and when the principle of contract was introduced, Mr. Elam Lynds, then its superintendent, did not allow the contractor to approach the convicts. The contractor engaged to give the stipulated price for the articles manufactured by the prisoners, and these articles were delivered to him, without his having directed their manufacture. Much was gained in point of discipline by this order of things; if it were advantageous to limit the intercourse between the contractor and the convicts, it was still better to prevent it entirely. However, such a system of administration was found both difficult and expensive.

The contractors, being deprived of the right of inspecting the labour, imposed disadvantageous conditions upon the prison; on the other hand, their exclusion from the workshops, made it, requisite that the jailors should be capable of instructing the prisoners in the respective arts; and such persons, possessing the necessary skill and technical knowledge, were not easily found. Finally, the sale of the articles was less easy and productive for the superintendent, than for the contractors, exclusively occupied with commercial operations. The result therefore, has been the adoption of a system of contract such as we have described; this system, surrounded by the guaranties which accompany it, possesses advantages which seem much to outweigh its inconveniences. However, Mr. Elam Lynds seems constantly to fear that the presence of the contractors in the prison, will lead sooner or later to the total ruin of the discipline.

We shall soon see, when we have occasion to treat of the expenses and income, that the labour of the prisoners is in general very productive. Visiting these various establishments, we have been surprised by the order, and sometimes the talent, with which the convicts work; and what makes their zeal quite surprising, is, that they work without any interest in its produce. In our prisons, as well as in those of the greater part of Europe, a part of the produce of their labour belongs to the prisoners. This portion, called *the pécule*, is more or less in various countries; in the United States it does not exist. There the principle is adopted, that the criminal owes all his labour to society, in order to indemnify it for the expenses of his detention. Thus, during the whole time of their punishment, the convicts work without receiving the slightest remuneration; and if they leave the prison, no account is given to them of what they have done. They merely receive a certain portion of money, in order to carry them to the place which they propose to make their new residence.

This system appears to us excessively severe. We do not dispute the right of society to indemnify itself by the labour of the convict for the expenses he causes; it is an incontestable right; moreover we do not know in what degree a considerable *pécule* or earning is useful to the convict, who, when he leaves the prison, generally sees in the money earned by him, but a means to satisfy passions, the more excited as they have been the longer repressed. But where would be the inconvenience in giving a slight stimulus to the zeal of the convict, by a small reward to his activity? Why should we not give him in his solitude, and in the midst of his sufferings, an interest in a gain however small, yet to him of immense value? Moreover, is it not necessary that on the day when he re-enters society, he should have, if not a considerable sum at his disposal, at least some means of support whilst he is in search of labour? Why not adopt the system of the Baltimore prison, where, though the principle of the other American penitentiaries has been acknowledged, yet its rigour has been alleviated? In

that prison every prisoner has his fixed task for the day: when that is finished, he does not cease to work, but he begins to work for himself; all that he does after his task, forms his *pécule*; and as he does not receive his earning before he leaves the prison, it is certain that it cannot become injurious to its discipline. There was a time when the prisoners at Baltimore could spend their earnings immediately for eatables. Their labour was then much more productive; but the inconvenience of such indulgence has been acknowledged to be destructive of good discipline; and at present their *pécule* remains untouched until the moment of their leaving the prison.

Such is the order established in the American penitentiaries. We have said that this discipline is applied to all prisoners in the state prison; however, the women have so far not yet been subjected to it, except in Connecticut. Generally they are found together in the American prisons as with us; and in that country, as with us, they are exposed to all the vices growing out of contaminated intercourse.

Some persons believe that it would be extremely difficult to apply to women a system, the basis of which is silence: yet the experiment made at Wethersfield, where the women are, like the rest of the prisoners, subject to. isolation in cells during night, and absolute silence during day, proves that the difficulty is not insurmountable. Again, it is not the difficulty of execution in this point which has prevented reform in the prisons of the United States. If, in the application of the new penitentiary system, the women have been omitted, this fact must be ascribed above all, to the small number of crimes committed by them in that country; it is because they occupy little space in the prison, that they have been neglected. It is the same with most evils of society, a remedy for which is ardently sought if they are important; if they are not alarming they are overlooked.

SECTION III.

Disciplinary Means.

The necessity of distinguishing the Philadelphia system from that of Auburn. — The first much easier to be put in practice, and to be maintained. — That of Auburn has for an auxiliary corporal punishment. — Moderate discipline at Wethersfield. — Discretionary power of the superintendents. — Aversion to corporal punishments. — What is their influence upon the state of health of the prisoners?

LET US now examine by what disciplinary means the order of things which we have explained above, is established and maintained.

How is silence so rigorously maintained among a number of assembled criminals? How are they made to work without any interest of their own?

Here also we have to distinguish between the Auburn and Philadelphia systems.

In Philadelphia, the discipline is as simple as the system itself. The only critical moment is that when the prisoner enters the prison. The solitary cell of the criminal is for some days full of terrible phantoms. Agitated and tormented by a thousand fears, he accuses society of injustice and cruelty, and in such a disposition of mind, it sometimes will happen that he disregards the orders, and repels the consolations offered to him. The only chastisement which the regulations of the prison permits, is imprisonment in a dark cell with reduction of food. It is rare that more than two days of such discipline are required, to curb the most refractory prisoner. When the convict has overcome the first impressions of solitude; when he has triumphed over the terrors which almost surrendered him to insanity or despair; when, in his solitary cell, in the midst of the pains of a stinging conscience, and the agitations of his soul, he has fallen into a dejection of mind, and has sought in labour a relief from his griefs; from that

moment he is tamed, and for ever submissive to the rules of the prison. What breach of order is it possible to commit in solitude? The entire discipline consists in the isolation of the prisoners, and the impossibility of their violating the established rule. In the other prisons, disciplinary punishments are inflicted on the prisoners who break the law of silence, or refuse to work. But silence is easy for him who is alone; and labour is not refused by those whose only consolation it forms. We have pointed out the inconvenience of absolute solitude, the deficiency of which is, that it deprives the prisoner's submission of its moral character but we must at the same time acknowledge its advantages in respect to discipline; and the facility of ruling an establishment of this nature, without the application of severe and repeated punishment, is certainly a very great advantage. There are some persons who consider the order established at Philadelphia complicated, organized with difficulty, and maintained with trouble. They are, in our opinion, greatly mistaken. The Philadelphia system is expensive, but not difficult to be established; and once established, it maintains itself. It is this very system, the discipline of which offers the least embarrassment; each cell is a prison in itself, and the convicts who are detained there cannot render themselves guilty of offences which can only be possibly committed in company with others. There is no punishment, because there is no infraction.

The discipline at Auburn, Sing-Sing, Boston, Wethersfield, and Baltimore, could not have the same character of simplicity: these various establishments themselves, follow, in this respect, different courses.

At Sing-Sing, the only punishment for those who infringe the established order, is that of the whip. The application of this disciplinary means is there very frequent; and the least fault is punished with its application. For various reasons this punishment is preferred to all others. It effects the immediate submission of the delinquent; his labour is not interrupted a single instant; the chastisement is painful, but not injurious to health; finally, it is believed that no other punishment would produce the same effects. The same principle is admitted at Auburn, but in its application is extremely rare. The penitentiaries of Boston and Baltimore, a little more severe than that at Auburn, are nevertheless much less so than Sing-Sing: Wethersfield differs from all others by its extreme mildness. (v)

In this latter prison stripes are not altogether objected to; but their application is as much as possible avoided: Mr. Pillsbury, superintendent of the establishment, has assured us, that for three years he has but one single time been obliged to inflict stripes. It is a severity to which recourse is had only if it is well ascertained that every other and milder way has been tried without effect: before resorting to stripes, absolute solitude day and night without labour is tried: if we believe the officers of the prison, nothing is rarer than to see a prisoner resist this first trial; he has been scarcely subjected to the rigour of absolute isolation, than he solicits the favour of again taking his place in the common workshop, and submits willingly to all that discipline requires. However, if he is not curbed at the first moment, greater severity is added to his solitude, such as entire privation of light, and diminution of food; sometimes also his bed is taken from him, &c., &c., &c. If the prisoner still obstinately resists, then, and then only, the whip is used, as the still more effective means of submission. The directors of this establishment seem to have a decided aversion to corporal chastisement; yet they would regret it much if they were not invested with the right to inflict it. They reject the application of cruel pain; but they find a powerful means of acting upon the criminals, in their authority to order it.

The tempered discipline of Wethersfield seems to suffice for the success of the establishment. Yet in the other prisons it is thought that the management of the whole

would be impossible without the assistance of the whip. This is the opinion of all practical men whom we have seen in the United States, particularly of Mr. Elam Lynds, whom we have mentioned above. The legislatures of New York, Massachusetts, Connecticut, and Maryland, have had the same conviction, since they have formally authorized the infliction of corporal punishment. These chastisements have also received the sanction of judicial authority; and the country, through the organ of her jury, has given several verdicts in favour of jailors who acknowledged having beaten the prisoners, (a:)

We have noticed the remarkable differences which exist in the disciplinary order of the various establishments; all, however, admit the principle of corporal punishment; and it is just to say, that there exist in the particular situation of each of the prisons, certain circumstances, which tend to explain the mildness or severity of its discipline.

If we remember the nature of the labours executed at SingSing, and the order established in that prison, we easily understand the insurmountable obstacles with which disciplinary order would meet in this prison, were it not supported by the most energetic measures of repression. Auburn does not require so much severity, because the same dangers do not threaten the order of the establishment. Wethersfield is, in this respect, in a still more favourable position; it contains less than two hundred criminals, whilst Auburn has six hundred and fifty, and SingSing more than nine hundred. It is evident, that the number, more or less considerable, of criminals, and the nature of the labour, render the penitentiary more or less easy of government. Now, could these various penitentiaries dispense with corporal chastisement? This is a question which we dare not solve. We are merely able to say, that, deprived of this assistance, prison discipline would meet with difficulties very difficult to be overcome. Its embarrassments would be so much the greater, as it is founded on an unique basis, that of absolute silence; and should it ever be deprived of this foundation, the whole fabric must inevitably crumble to pieces; now, how is it possible to maintain absolute silence among criminals, if they are not continually overawed by the fear of a prompt and rigorous chastisement? In the American prisons, this discipline, founded upon stripes, is so much more powerful, as it is practised more arbitrarily. At Sing-Sing, and at Auburn, there are no written regulations: the superintendents of these prisons, have only, in their government, to conform themselves to the verbal prescriptions which they receive from the inspectors, and to a few principles expressed in the law; these principles are: solitary imprisonment of the convicts during night, and labour in silence during day. For the rest, they enjoy, as to all acts of execution, a discretionary power.(y) At Sing-Sing, the superintendent has even the right to delegate this discretionary power to all his inferior agents; and in fact he has transmitted his power to thirty jailors, who are invested like himself with the power of chastising the convicts. At Auburn, the superintendent alone has the power to punish; yet the same authority belongs to the inferior keepers, in all cases of urgent and absolute necessity. The same is the case in Boston. In Wethersfield, the regulations of the prison are in writing; the subaltern officers can in no case exercise the right of punishing, with which the superintendent alone is invested, and which he uses with so much moderation. Important debates have taken place in the state of New York, on the question whether the presence of an inspector ought to be required when inflicting stripes upon a prisoner: according to the letter of the law, this guaranty was indispensable; but the obligation of the inspectors to be present at such punishments, was so frequently inconvenient, and caused them such painful feelings, that they asked immediately to be absolved from this duty; and at present the right of the officers to inflict stripes without these official witnesses is acknowledged. The

inspectors have nevertheless a great influence on the application of disciplinary chastisement. Sing-Sing is the only prison where their superintendence has appeared to us superficial upon this point. The administration of this vast penitentiary is so difficult, that there seems to be no disposition to dispute the least part of the absolute power of the keepers.

We shall not investigate here whether society has the right to punish, with corporal chastisement, the convict who refuses to submit to the obligation of labour, or to the other exigencies of penitentiary discipline.

Such theoretical questions are rarely discussed, to the interest of truth and human society.

We believe that society has the right to do every thing necessary for its conservation, and for the order established within it; and we understand perfectly well, that an assemblage of criminals, all of whom have infringed the laws of the land, and all of whose inclinations are corrupted, and appetites vicious, cannot be governed in prison according to the same principles, and with the same means, as free persons, whose desires are correct, and whose actions are conformable to the laws. We also conceive perfectly well, that a convict who will not labour, ought to be constrained to do so, and that severity ought to be used in order to reduce him to silence, who will not observe it; the right of society seems to us, on this point, beyond all doubt, if it cannot arrive at the same end by milder means; but in our opinion that is not the question.

To what point are corporal chastisements reconcilable with the object of the penitentiary system itself, which is the reformation of the guilty? If this pain be ignominious, does it not go directly against the end which we propose to obtain, viz. to awaken the morality of an individual, fallen in his own opinion?

This question seems to us to be the only one to be examined; but we do not believe that it ought to be solved in an arbitrary manner. It would seem that much depends upon the light in which public opinion, and that of the prisoners, consider bodily punishment.

The discretionary power, by virtue of which, the lowest keeper at Auburn, and even the turnkeys at Sing-Sing, lash the prisoners, is little contested in the United States.

“The right of the keepers over the persons of the prisoners, it is said, is that of a father over his children, of the teacher over his pupils, of the master over his apprentice, and of a sea-captain over his crew.”

The punishment of stripes is in use in the American navy, with no idea of infamy attached to it. In the beginning, the whip was not admitted as a disciplinary means in the penitentiary system. When it was introduced as an auxiliary to the regulations, some voices were raised against it; but this opposition was much more a dispute of philosophy than one of repugnance to national customs.

Pennsylvania is, perhaps, the only state in the Union which continues to protest against corporal punishment, and which excluded it from the regulations of her prisons. The quakers cease not to protest against the inhumanity of this punishment, and their philanthropic protestations are joined by the eloquent voice of Edward Livingston, who also rejects this means of discipline from his code. It is chiefly on account of corporal punishment, made use of at Auburn, that he declares himself the adversary of the system which is in practice in that prison.

But their words find few corresponding voices in most parts of the Union, and, at present, all new penitentiaries, that of Philadelphia only excepted, make use of the

whip; the laws of the country authorize the discipline which they have adopted, and these laws have the sanction of public opinion.

There is certainly much exaggeration in the reproaches made against the Auburn discipline. First, stripes are not so frequent as is believed; necessary, as they are, to establish silence in a newly founded prison, they are seldom made use of in order to maintain this regulation if once established.

Now, is the whole system of these prisons, as is asserted, injurious to health, and are the rigours of solitude and the cruelties of the discipline, fatal to the life of the imprisoned? We are able to furnish positive documents upon this point.

All prisoners, whom we have seen in the penitentiaries of the United States, had the appearance of strength and health; and if we compare the number of those who die there with the mortality in the old prisons, we shall see that the new penitentiaries, in spite of their severe regulations and barbarous discipline, are much more favourable to the life of the imprisoned. Mr. Edward Livingston wishes to see solitary confinement during night and day, without labour, and reduction of food substituted for the whip, as a disciplinary measure; it does not seem that at Wethersfield this punishment, which as we have seen, is preferred to stripes, has produced bad effects. However, ten individuals are mentioned as having died in consequence of this kind of punishment in the prison of Lamberton in New Jersey, whilst there is no case yet on record of a prisoner having become the victim of corporal whipping.

In the old Walnut street prison, there was formerly, during each year, one death out of sixteen prisoners, and in that of New York (Newgate,) one out of nineteen. In both these prisons, the criminals were neither in solitary confinement, nor obliged to be wholly silent, nor subjected to corporal punishment.

In the new penitentiaries, founded upon the principles of silence and isolation supported by the discipline of stripes, death takes place in an infinitely smaller proportion.

At Sing-Sing, one prisoner died out of thirty-seven; at Wethersfield one of forty-four; at Baltimore one of forty-nine; at Auburn one of fifty-six; and at Boston one of fifty-eight.

Still more: if we compare the mortality of the prisoners to that of persons enjoying liberty and society, we shall yet arrive at a result favourable to the penitentiaries. There dies, in fact, in Pennsylvania, every year, one out of thirty-nine persons, and in Maryland one out of forty-seven. Again, in the old prisons where free communication existed, and where the discipline was mild, one half more died than in society generally; and in the new penitentiaries, subject to the austere system of isolation, silence, and stripes, deaths are less numerous. These cyphers are better answers than all possible arguments, to the objections which have been raised.

We have said nothing on the sanitary state of the new Philadelphia prison, which has been in existence for too short a time to judge fully of its effects. We have every reason to believe that the system of perpetual and absolute seclusion, established there in full vigour, will prove less favourable to the health of the prisoners than the Auburn system. Yet the physician of that establishment believes himself, able already to declare that the mortality will be less there than in the ancient prison of Walnut street.

To sum up the whole on this point, it must be acknowledged that the penitentiary system in America is severe. Whilst society in the United States gives the example of the most extended liberty, the prisons of the same country offer the spectacle of the most complete despotism. The citizens subject to the law are protected by it; they only cease to be free when they become wicked.

CHAPTER III.

Reform.



Illusions of some philanthropists respecting the penitentiary system. — In what consist its real advantages. — Prisoners cannot corrupt each other. — Means employed to effect their moral reform. — Primary and religious instruction. — Advantages and disadvantages of the Philadelphia system on this point. — The Auburn system, less philosophical, depends more for its success upon individuals charged with its execution. — Influence of religious persons on reformations. — Their reformation, is it obtained? — Distinction between radical and external reformation.

SECTION I.

THERE are in America as well as in Europe, estimable men whose minds feed upon philosophical reveries, and whose extreme sensibility feels the want of some illusion. These men, for whom philanthropy has become a matter of necessity, find in the penitentiary system a nourishment for this generous passion. Starting from abstractions which deviate more or less from reality, they consider man, however far advanced in crime, as still susceptible of being brought back to virtue. They think that the most infamous being may yet recover the sentiment of honour; and pursuing consistently this opinion, they hope for an epoch when all criminals may be radically reformed, the prisons be entirely empty, and justice find no crimes to punish. (z)

Others, perhaps without so profound a conviction, pursue nevertheless the same course; they occupy themselves continually with prisons; it is the subject to which all the labours of their life bear reference. Philanthropy has become for them a kind of profession; and they have caught the *monomanie* of the penitentiary system, which to them seems the remedy for all the evils of society.

We believe that both overrate the good to be expected from this institution, of which the real benefit can be acknowledged without attributing to it imaginary effects.

There is, first, an incontestable advantage inherent in a penitentiary system of which isolation forms the principal basis. It is that the criminals do not become worse in the prison than they were when they entered it. On this point this system differs essentially from that pursued in our prisons, which not only render the prisoner no better, but corrupt him still more. With us all great crimes have been planned in some measure in a prison, and been deliberated upon in the midst of assembled malefactors. Such is the fatal influence of the wicked upon each other, that one finished rogue in a prison suffices as a model for all who see and hear him, to fashion their vices and immorality upon his. (aa)

Nothing, certainly, is more fatal to society than this course of mutual evil instruction in prisons; and it is well ascertained that we owe to this dangerous contagion a peculiar population of malefactors, which every day becomes more numerous and more, alarming. It is an evil which the penitentiary system of the United States cures completely.

It is evident that all moral contagion among the imprisoned is impossible, particularly in Philadelphia, where thick walls separate the prisoners day and night. This first result is important, and we must take good care not to underrate its importance. The theories on the reform of the prisoners are vague and uncertain. It is not yet known to what degree the wicked may be regenerated, and by what means this

regeneration may be obtained: but if the efficiency of the prison in correcting the prisoners is yet doubtful, its power of depraving them still more *is* known, because experience proves it. The new penitentiaries, in which this contagious influence is avoided, have therefore gained a signal advantage; and as long as that prison has not yet been found whose discipline is completely regenerating in its effects, perhaps we may be permitted to say that the best prison is that which does not corrupt.

It is nevertheless clear, that this result, however weighty, does not satisfy the authors of the system; and it is natural that having preserved the prisoner from the corruption with which he was threatened, they aspire at reforming him. Let us see by what means they endeavour to arrive at this end. We shall then also examine the success of their efforts.

Moral and religious instruction forms, in this respect, the whole basis of the system. In all penitentiary systems, those who have not learned to read are instructed in it. These schools are voluntary. Though no convict is obliged to join them, they consider it as a favour to be admitted: and if it is impossible to receive all who offer themselves, those among the prisoners are selected who are most in need of the benefit of instruction. The free choice left to the prisoners to join or not the school, makes those who enter it thus voluntarily, much more zealous and docile. This school is kept every Sunday. It precedes the morning service. The minister who administers this service, accompanies it almost always with a sermon, in which he abstains from every dogmatical discussion, and treats only of religious morals; so that the instruction of the minister is as fit for the Catholic as for the Protestant, for the Unitarian as for the Presbyterian. The meals of the prisoners are always preceded by a prayer, offered up by the chaplain of the establishment; each of them has a Bible, given by the state, in his cell, in which he may read the whole time that he is not engaged in labour.

This order exists in all the penitentiaries; but we should be much deceived were we to believe that uniformity exists on this point in these various prisons. Some attach to religious instruction much more importance than others. Some neglect the moral reformation of the prisoners, whilst others make it a particular object. At Sing-Sing, for instance, where the nature of things requires so severe a discipline, the directors of the establishment seemed to have in view the support of external order only, and the passive obedience of the convicts. The assistance of moral influence is disregarded; primary and religious instruction, it is true, is somewhat attended to; but it is manifest that it is considered but a secondary object. In the prisons of Auburn, Wethersfield, Philadelphia, and Boston, the reformation of the criminals occupies a much more prominent place.

In Philadelphia, the moral situation in which the convicts are placed, is eminently calculated to facilitate their regeneration. We have more than once remarked the serious turn which the ideas of the prisoner in this penitentiary take. We have seen convicts there, whose levity had led them to crime, and whose mind had, in that solitude, contracted habits of meditation and of reasoning altogether extraordinary. The system of this prison appeared to us especially powerful over individuals endowed with some elevation of mind, and who had enjoyed a polite education. Intellectual men are naturally those who are the least able to endure a separation from all society.

We can however assert, that this absolute solitude produces the liveliest impression on all prisoners. Generally, their hearts are found ready to open themselves, and the facility of being moved renders them also fitter for reformation. They are particularly accessible to religious sentiments, and the remembrance of their family has an

uncommon power over their minds. One who enjoys the intercourse of society, is perhaps incapable of feeling the whole value of a religious idea thrown into the lonesome cell of a convict.

Nothing distracts, in Philadelphia, the mind of the convicts from their meditations; and as they are always isolated, the presence of a person who comes to converse with them is the greatest benefit, and one which they appreciate in its whole extent. When we visited this penitentiary, one of the prisoners said to us: "it is with joy that I perceive the figure of the keepers, who visit my cell. This summer a cricket came into my yard; it looked, like a companion. When a butterfly or any other animal happens to enter my cell, I never do it any harm." If the soul is thus disposed, it is easy to conceive what value the prisoners must attach to moral communications, and how great must be the influence of wise advice and pious exhortations on their minds.

The superintendent visits each of them at least once a day. The inspectors visit them at least twice a week, and a chaplain has the special charge of their moral reformation. Before and after these visits, they are not entirely alone. The books which are at their disposal, are in some measure companions who never leave them. The Bible, and sometimes tracts containing edifying anecdotes, form their library. If they do not work, they read, and several of them seem to find in it a great consolation. There were some, who only knew the letters of the alphabet, and have in prison learned, by themselves, to read. Others less ingenious or persevering, have succeeded in it only with the assistance of the superintendent or the inspectors.

These are the means employed in Philadelphia to enlighten and reform the convicts.

Can there be a combination more powerful for reformation than that of a prison which hands over the prisoner to all the trials of solitude, leads him through reflection to remorse, through religion to hope; makes him industrious by the burden of idleness, and which, whilst it inflicts the torment of solitude, makes him find a charm in the converse of pious men, whom otherwise he would have seen with indifference, and heard without pleasure?

The impression made by such a system on the criminal, certainly is deep; experience alone can show whether the impression is durable.

We have said that his entry into the penitentiary is a critical moment; that of his departure from it is still more so. He suddenly passes from absolute solitude to the ordinary state of society; is it not to be feared that he will greedily search for those social enjoyments of which he has been deprived so completely? He was dead to the world, and after a loss of several years he reappears in society, to which, it is true, he brings good resolutions, but perhaps also burning passions, the more impetuous, from their being the longer repressed.

This is, perhaps, on the score of reformation, the chief inconvenience of absolute isolation. This system possesses, however, an advantage, which ought not to be passed over in silence; it is, that the prisoners subject to this discipline, do not know each other. This fact avoids serious inconveniences, and leads to happy consequences. There exists always, a tie more or less strong between criminals, who have formed their acquaintance in a common prison; and if they meet again after having gone through their imprisonment, they stand in a reciprocal dependance. Known, mutually, the one is almost forced to assist the other, if the latter will again commit an offence; it would be necessary to have become virtuous in a very elevated degree, in order not to become again criminal. This rock, generally so fatal to delivered convicts, is, indeed, in part avoided in the Auburn system, where the prisoners, seeing without knowing each other, contract no intimate connexion. Yet we are still much more

certain of avoiding this danger in the Philadelphia prison, where the convicts never behold each other's faces.

He who at the expiration of his punishment leaves this prison in order to re-enter society, cannot find in his former fellow-prisoners, whom he does not know, any assistance in doing evil; and if he is willing to pursue an honest course, he meets nobody to prevent him from doing so. If he wish to commit new offences, he stands alone; and, as to this point, he is still as isolated in the world as he was in the prison; if, on the contrary, he is desirous of commencing a new life, he possesses full liberty to do so.

This system of reform is undoubtedly a conception which belongs to the highest philosophy; in general it is simple and easy to be put in practice; yet it presents in its execution, a difficulty sufficiently serious. The first rule of the system being, that the prisoners shall be entirely prevented from holding intercourse with, or even seeing each other, it results that no religious instruction or school can take place in common, so that the teacher or chaplain can instruct or exhort but one person at a time. This occasions an immense loss of time. If the prisoners could be united to participate in the benefit of the same lesson, it would be much easier to diffuse moral and religious instruction; but the principles of the system are opposed to it.

In the prisons of Auburn, Wethersfield, Sing-Sing, and Boston, the system of reformation does not rest upon so philosophical a theory as at Philadelphia. In the latter prison, the system seems to operate by itself, by the sole force of its principles. At Auburn, on the contrary, and in the prisons of the same nature, its efficiency depends much more upon the persons charged with its execution; we see, therefore, assistance borrowed from external means, which are not so much employed in the other prison.

The Auburn plan, which permits the prisoners to assemble during the day, seems, indeed, less calculated than that of Philadelphia to produce reflection and repentance; but it is more favourable to the instruction of the prisoners; in all prisons subject to the same discipline, the instructor and the chaplain can address all the prisoners at once. At Auburn there is a chaplain (Mr. Smith) exclusively for the establishment. The same is the case in Wethersfield, where Mr. Barrett, a Presbyterian minister, devotes himself entirely to the penitentiary. After the school, and the service of Sunday, the prisoners return to their solitary cells, where the chaplain visits them; he visits them in a similar way on the other days of the week; and strives to touch their hearts by enlightening their conscience; the prisoners feel pleasure when they see him enter their cell. He is the only friend who is left to them; they confide in him all their sentiments; if they have any complaint against the officers of the prison, or if they have a favour to sue for, it is he who is intrusted with their wishes. By showing the interest which he takes in them, he gains more and more their confidence. He soon becomes initiated into all the secrets of their previous life, and, knowing the moral state of all, he endeavours to apply to each the proper remedy for his evil. For the rest, the minister interferes in no respect with the discipline of the prison. If the convicts are in their workshops, he never draws their attention from their work; and if a complaint is made to him, he does not act, but merely solicits in favour of the unfortunate whose interpreter he is. It would be difficult, indeed, to describe the zeal which animates Messrs. Barrett and Smith in the exercise of their pious functions; yet they sometimes, perhaps, deceive themselves respecting the results of their efforts, though they are at all events sure to earn the veneration of all who know them.

They are admirably seconded in their charitable office by several individuals not belonging to the establishment. The Sunday school is almost entirely managed by

citizens residing near the prison. These, guided by a sentiment of humanity with which a profound feeling of religious duty mixes itself, pass on every Sunday two or three hours in the prison, where they act as primary instructors. They however do not only instruct the prisoners in reading, but explain to them also, the most important passages of the gospel. At Auburn, this gratuitous and religious office is performed by the members of the Presbyterian seminary. School is also held at Sing-Sing, Baltimore, and Boston. In the last named city, we have seen men of the highest distinction taking upon themselves this obscure office; they made several criminals, standing around them, repeat their lesson; sometimes they would intersperse their remarks and councils in so affecting a way, that the convicts shed tears of emotion. Certainly, if the reformation of a criminal be possible, it must be obtainable by such means and such persons.

Now, to what point is this reformation actually effected by the different systems which we have examined?

Before we answer this question, it will be necessary to settle the meaning attached to the word *reformation*.

Do we mean by this expression the radical change of a wicked person into an honest man — a change which produces virtues in the place of vices?

A similar regeneration, if it ever take place, must be very rare. What would it be in fact? To give back its primitive purity to a soul which crime has polluted. But here the difficulty is immense. It would have been much easier for the guilty individual to remain honest, than it is to rise again after his fall. It is in vain that society pardons him; his conscience does not. Whatever may be his efforts, he never will regain that delicacy of honour, which alone supports a spotless life. Even when he resolves to live honestly, he cannot forget that he *has been* a criminal; and this remembrance, which deprives him of self-esteem, deprives also his virtue of its reward and its guaranty.

Yet if we consider all the means employed in the prisons of the United States, in order to obtain this complete regeneration of the wicked, it is difficult to believe that it should not be sometimes the reward of so many efforts. It may be the work of pious men who devote their time, their cares, and their whole life to this important object. If society be incapable of calming the conscience, religion has the power. If society pardon, it restores liberty to the prisoner's person — this is all. When God pardons, he pardons the soul. With this moral pardon, the criminal regains his self-esteem, without which honesty is impossible. This is a result which society never can attain, because human institutions, however powerful over the actions and the will of men, have none over their consciences.

We have seen some persons in the United States, who have a strong belief in this reformation from the means used to effect it. Mr. Smith said to us at Auburn, that out of the six hundred and fifty prisoners in that prison, already fifty, at least, were radically reformed, and that he considered them *good Christians*. Mr. Barrett, at Wethersfield, thought that of the hundred and eighty prisoners in that penitentiary, already fifteen or twenty were in a state of complete regeneration.

It would be useless to investigate here, whether Messrs. Smith and Barrett deceived themselves in their estimate; it seems to us that we can admit with them the existence of radical reformation. But, we must be allowed to believe that the cases are still rarer than they themselves believe. This is at least the opinion of almost all enlightened men with whom we have come into contact in the United States. Mr. Elam Lynds, who has great experience in prison matters, goes much further, and considers the thorough reformation of a criminal a chimera. Perhaps he runs into the

other extreme, and so discouraging an opinion as his, ought to be founded on incontrovertible truth, in order to be adopted. There exists no human means of proving this complete reformation; how can we prove with ciphers the purity of the soul, the delicacy of sentiments, the innocency of intentions? Society, without power to effect this radical regeneration, is no more capable of proving it if it exist. In the one and the other case, it is an affair of the interior *forum*; in the first case God alone can act; in the second, God alone can judge. However, he who on earth is the minister of God, has sometimes the privilege of reading the consciences of others; and it is thus that the two ministers whom we have mentioned, affect to know the moral state of the prisoners, and what goes on in the depth of their souls. Undoubtedly they are more favourably placed than any body else, to gain the confidence of these unhappy beings, and we are persuaded that they often receive disinterested avowals, and the expressions of sincere repentance. But how much risk do they run of being deceived by hypocritical protestations! The convict, whatever may be his crime, always looks for pardon. His hope exists, particularly in the prisons of the United States, where, during a long time, the custom of pardoning has been much abused. The criminal, therefore, has an interest in showing to the chaplain, with whom alone he has moral communications, profound repentance for his crime, and a lively desire to return to virtue. If these sentiments are not sincere, he nevertheless will profess them. On the other hand, the man who sacrifices his whole existence to the pursuit of an honourable end, is himself under the influence of an ardent desire which must sometimes lead to errors. As he desires with ardour the reformation of the criminals, he easily gives credence to it. Shall we find fault with his credulity? No, because success, in which he is confident, encourages him to renewed efforts; illusions of this nature only become fatal, if on the belief of similar regenerations pardons should be multiplied; as this would encourage hypocrisy, and we should soon see the prisoners reform themselves by calculation. We must say, that in general, this danger seems to be felt very much; and that pardons become rarer and rarer; if the wish of public opinion should be completely satisfied, the governors would make use of their privilege of pardon only in favour of convicts whose guilt has become doubtful, in consequence of circumstances having appeared after their judgment. However, we must also add, that the inconvenience of too great a number of pardons is not yet entirely avoided; at Auburn, one-third of the whole number of pardons is granted on the presumption of reformation.

To resume, we would say positively, if the penitentiary system cannot propose to itself an end other than the radical reformation of which we have just spoken, the legislature perhaps should abandon this system; not because the aim is not an admirable one, but because it is too rarely obtained. The moral reformation of an individual, which is an important affair for a religious man, is little for a politician; or to express it better, an institution is only political if it be founded on the interest of the mass; it loses its character if it only profit a small number.

But if it be true that the radical reformation of a depraved person is only an accidental instead of being a natural consequence of the penitentiary system, it is nevertheless true that there is another kind of reformation, less thorough than the former, but yet useful for society, and which the system we treat of seems to produce in a natural way.

We have no doubt, but that the habits of order to which the prisoner is subjected for several years, influence very considerably his moral conduct after his return to society.

The necessity of labour which overcomes his disposition to idleness; the obligation of silence which makes him reflect; the isolation which places him alone in presence of his crime and his suffering; the religious instruction which enlightens and comforts him; the obedience of every moment to inflexible rules; the regularity of a uniform life; in a word, all the circumstances belonging to this severe system, are calculated to produce a deep impression upon his mind.

Perhaps, leaving the prison he is not an honest man; but he has contracted honest habits. He was an idler; now he knows how to work. His ignorance prevented him from pursuing a useful occupation; now he knows how to read and to write; and the trade which he has learnt in the prison, furnishes him the means of existence which formerly he had not. Without loving virtue, he may detest the crime of which he has suffered the cruel consequences; and if he is not more virtuous he has become at least more judicious; his morality is not honour, but interest. His religious faith is perhaps neither lively nor deep; but even supposing that religion has not touched his heart, his mind has contracted habits of order, and he possesses rules for his conduct in life; without having a powerful religious conviction, he has acquired a taste for moral principles which religion affords; finally, if he has not become in truth better, he is at least more obedient to the laws, and that is all which society has the right to demand.

If we consider the reformation of convicts under this point of view, it seems to us to be obtained, in many cases, through the system which we are considering; and those Americans who have the least confidence in the radical regeneration of criminals, believe, nevertheless, in the existence of a reformation reduced to these more simple terms.

We must remark here, that the zeal of religious instructors, which is often insufficient to effect a radical reform, has yet a great influence on that of the second grade, which we have just described. It is because their aim is great, that they pursue it with ardour, and the nobleness of their undertaking elevates at once their office, and the functions of those who, in concert with them, work for the reformation of the criminals; it gives altogether to the penitentiary establishment a greater interest, and a much higher morality. Thus, though the preacher does not often arrive at his proposed end, it is yet important that he should pursue it without interruption; and, perhaps, that point which we have indicated, is obtained only because the aim is taken much higher.

The advantages of the penitentiary system of the United States may then be classed in the following manner.

First, Impossibility of the mutual corruption of the prisoners.

Secondly, Great probability of their contracting habits of obedience and industry, which render them useful citizens.

Thirdly, Possibility of a radical reformation.

Though each of the establishments which we have examined aims at these three results, there are nevertheless, in this respect, some shades of difference, which distinguish the Auburn system from that of Philadelphia.

Philadelphia has, as we have already observed, the advantage over Auburn in respect to the first point. Indeed, the prisoners, separated by thick walls, can communicate with each other still less than those who are separated by silence only. The Auburn discipline guaranties the certainty that silence shall not be violated, but it is a mere moral certainty, subject to contradiction; whilst at Philadelphia, communications among the convicts is physically impossible.

The Philadelphia system being also that which produces the deepest impressions on the soul of the convict, must effect more reformation than that of Auburn. The latter, however, is perhaps more conformable to the habits of men in society, and on

this account effects a greater number of reformations, which might be called “legal,” inasmuch as they produce the external fulfilment of social obligations.

If it be so, the Philadelphia system produces more honest men, and that of New York more obedient citizens.

SECTION II.

The efficiency of the system proved by ciphers. — Does the number of crimes in the United States increase? — Influence of coloured people and foreigners. — What is the effect of knowledge in this respect? — Necessary distinction between the number of crimes and that of convictions. — The penitentiary system is mostly foreign to the increase of crime. — Its influence limited to prisoners is tested by recommitments: it can only be appreciated after several years. — Comparison between the ancient prisons and the new penitentiaries. — Impossibility of comparing the number of crimes and of recommitments in the United States and in France. — Different elements of the two societies: difference of the penal laws, and of the powers of the judicial police, in the two countries. — America can be compared only with herself.

AFTER having shown the consequences of the penitentiary system, such as we understand them, shall we find in ciphers the proof of those facts, which we believe we can attribute to it?

It is customary, in order to know what influence the penitentiary system has upon society, to meet the question thus:

Has the number of crimes augmented or diminished since the penitentiary system has been established? (*bb*)

The solution of all questions of this kind in the United States, is extremely difficult, because it requires statistical documents, which it is almost impossible to procure. There is neither in the Union nor in the different states, any central authority which possesses them. With difficulty the statistics of a town or county can be obtained; but never those of a whole state.

Pennsylvania is the only state in which we have been able to learn the total number of crimes. During the year 1830, there were two thousand and eighty-four individuals condemned in this state to imprisonment; which, if compared to a population of 1,347,672 inhabitants, gives one conviction for 653 inhabitants.

In other states we have obtained very exact materials respecting the number of certain crimes, but never the totality of offences. Thus we know merely the number of burglaries committed in the states of New York, Massachusetts, Connecticut, and Maryland, which caused the criminals to be sent to the state prison.

If we take these special convictions for the basis of our observations? we shall see that in the states of New York, Massachusetts, and Maryland, the number of criminals, compared to the population, decreases; that in the state of Connecticut it increases; whilst it is stationary in Pennsylvania.

Shall we conclude from this statement that the prison of Connecticut is very bad; that those of New York, Massachusetts, and Maryland, are the only good penitentiaries; and that those of Pennsylvania are better than the first, but worse than the others?

This conclusion would be strange, because it is an incontestable fact, that the penitentiary of Connecticut is better than the prisons of Maryland and Pennsylvania.

If we examine with attention the situation of these different states, and the political circumstances which surround them, we shall see that the number, more or less considerable, of crimes, and even their decrease or increase, may be owing to causes entirely foreign to the penitentiary system.

First, a difference must be made between the number of crimes and their increase: in the state of New York there are more crimes committed than in Pennsylvania; yet the number of crimes is stationary in the latter state, whilst it diminishes in the former. In Connecticut, where crimes increase, there are, in the whole, but half the crimes committed, in proportion, to those in all other states.

We would add, that, in order to establish well founded points of comparison between the various states, it would be necessary to deduct from the population of each the foreigners, and to compare only the crimes committed by the settled population; proceeding thus, it would be found that Maryland is that state the settled population of which commits most crimes. This fact is explained by a cause peculiar to the southern states — the coloured race. In general, it has been observed, that in those states in which there exists one negro to thirty whites, the prisons contain one negro to four white persons. The states which have many negroes must therefore produce more crimes. This reason alone would be sufficient to explain the large number of crimes in Maryland: it is, however, not applicable to all the states of the south; but only to those in which manumission is permitted: because we should deceive ourselves greatly were we to believe that the crimes of the negroes are avoided by giving them liberty; experience proves, on the contrary, that in the south the number of criminals increases with that of manumitted persons; thus, for the very reason that slavery seems to draw nearer to its ruin, the number of freed persons will increase for a long time in the south, and with it the number of criminals. (*cc*)

Whilst the southern part of the United States contains in its bosom this fertile cause of crimes, there are in the states of the North, on the other hand, such as New York and Massachusetts, several political causes which tend to diminish the number of crimes.

The coloured population decreases here every day, compared to the white population which goes on continually increasing.

Moreover, the foreigners who arrive every year from Europe without means of existence, in these states are a cause of crime which is continually becoming less.

In the same measure as the population increases, the number of emigrants, though not decreasing in itself, becomes less in relation to the sum total of the inhabitants.

The population doubles in thirty years; whilst the number of emigrants remains about the same. So that this cause of increase of crime in the North, though apparently stationary, loses every year its force in a statistical point of view; the cipher which represents it remains always the same considered by itself; but it becomes less compared with another cipher which daily increases.

Some Americans believe also that knowledge and education, so much diffused in the states of the North, have a tendency to diminish the number of crimes.

There are in the state of New York, with a population of two millions of inhabitants, five hundred and fifty thousand children instructed in the schools, and the state alone spends for this object nearly six millions of francs every year. It seems that an enlightened population, to whom no opportunity is wanting which agriculture, commerce, and manufactural industry can offer, should commit less crimes than that which possesses these latter advantages without having the same intellectual means to make use of them; nevertheless, we do not believe that to the diffusion of knowledge this decrease of crimes in the North is to be attributed, because in Connecticut, where knowledge is still more diffused than in the state of New York, crimes increase with extreme rapidity; and if we cannot reproach knowledge with this prodigious increase, we are at least constrained to acknowledge that it has not the power of preventing it; for the rest, we do not pretend to explain these strange

anomalies exhibited by states whose political institutions are almost the same, and in which, nevertheless, the proportion of crimes to the population is so different; these difficulties belong to that class which never fails to lead to every kind of statistical labours. But the considerations which we have just offered, serve at least to prove how many important causes, unconnected with the penitentiary system, influence the increase or decrease of crime.

Sometimes a crisis in the industry of a country, the disbanding of an army, &c., &c., &c., are sufficient to increase the number of offences during a year.

Thus in the year 1816, the number of criminals increased in an extraordinary degree in all American prisons. Had the penitentiary system any thing to do with it? No, it was simply in consequence of the war between America and England; peace having been concluded, a number of regiments were disbanded, and the soldiers thus deprived for the moment of employment.

There is another difficulty; even if we agree respecting the cause of crimes, we do not know exactly that of their increase.

How shall the number of crimes be proved? By that of the convictions? Several causes, however, may produce more frequent convictions, though the number of crimes be the same. (*dd*)

This may happen, if the police pursue crimes with more activity — a circumstance which generally occurs, if public attention is more actively directed to the subject. In such case the number of crimes is not increased, but more crimes are proved. The same is the case when courts of justice are more exact; which happens always when the penal law is mitigated. Then the number of acquittals diminishes. There are more convictions, though the number of crimes has not varied. The penitentiary system itself, which is intended to diminish the number of crimes, has for its first result, the increase of convictions. In the same degree as magistrates feel repugnant to condemn the guilty, since they know the corrupting influence of the prison which receives them; in the same degree, they show themselves more ready to pronounce a condemnation as soon as they know that the prison, far from being a school of crime, is a place of repentance and reformation, (*ee*)

However this may be, it is clear from the above, that the increase of crimes or their decrease, is produced sometimes by general causes, and sometimes by accidental ones, which have no direct connexion with the penitentiary system.

If we consider the object of the penitentiary system and its natural extent, we shall see that it cannot have that general influence which is often attributed to it; and that the question is not put as it ought to be, if we intend to judge of it by the absolute number of crimes; a prison discipline, good or bad, cannot have any influence except on those who have been imprisoned. Prisons may be very good in a country where there are many crimes, and very bad in another in which few are committed. Thus in Massachusetts, where there are less convicts, the prisons are bad, whilst they are good in the State of New York in which crimes are much more numerous. A bad prison cannot corrupt those who have not been exposed to its influence, any more than a good penitentiary can correct those who have remained out of the reach of its beneficial discipline.

The institutions, the habits, and political circumstances — these influence most the moral state of men in society; prisons act but on the morality of prisoners.

The penitentiary system then has not that extended circle of action which sometimes is attributed to it. If we reduce it as we ought to do, to the inmates of the prison, its influence is sufficiently important not to attribute to it another that is foreign to it; and, in fact, if this part of the social body on which the penitentiary

system operates is but small, it is at all events the most diseased, and its disorder is both the most contagious and the most important to be remedied.

Hence, if we wish to appreciate the merit of a prison and the system which has been put in practice, we ought to observe not the morality of society in general, but only of those individuals, who, having been imprisoned in such establishments, have returned to society; if they commit no new offence, we have a right to believe that the influence of the prison has been salutary; and if they relapse into new crimes, it is a proof that the prison has not made them better.

Whilst it is true that a large or small number of recommittals alone can prove the deficiency or excellence of a prison, we must add, that it is impossible to obtain, on this point, a perfectly exact statement.

On the one hand, it is difficult to obtain proof that liberated convicts have led an honest life; on the other, we have not always a knowledge of the new crimes which they commit.

To these considerations, which appear to us necessary to reduce the question to its true limits, we shall add another, which seems to us equally important; that is, in order to appreciate the effects of the penitentiary system, we ought not to consider the epoch of its creation, but the period which follows it. This truth, which it seems idle to mention, has nevertheless been forgotten by writers of great merit; we will quote an example.

We have said already that in the year 1790, a new system of imprisonment was established in Philadelphia, and the Walnut street prison organized on a plan which we have pointed out as entirely deficient; yet by some accidental circumstance, or from some unknown reason, the number of crimes in Pennsylvania during the years 1790, 1791, 1792, and 1793, was considerably less than during the preceding years. Mr. Livingston and Mr. Roberts Vaux, in the United States; and in France, the Duke de Larochehoucauld-Liancourt and Mr. Charles Lucas, have drawn from this decrease of crimes, the proof of the efficiency of the system; but their arguments seem to be founded on a fact erroneously appreciated. To ascribe this result to the new system, it would have been necessary to prove that the individuals, once imprisoned in Walnut street, had not committed new crimes. This proof could not be made. In fact, the system commences in 1790; and already in the years 1791, 1792, and 1793, the effects are sought for, i. e. before most of the prisoners, on whom the new system could have any effect, were released, (gg) It is easy to conceive that the effect of the penitentiary system cannot be appreciated except after a certain series of years, and only after the convicts, whose terms have expired, have had time to commit new crimes, or to give assurance of an honest life.

On this account we shall pass over the results obtained in the new penitentiaries of Philadelphia, Sing-Sing, Boston, and Baltimore; by giving up the arguments which we might draw from these different prisons, we shall very much narrow the circle of disagreement; but we shall have at least the advantage of giving to our arguments none but solid foundations.

Let us then compare the effects produced by the ancient prisons of the United States, with those resulting from the new system practised in the penitentiaries of Auburn and Wethersfield, the only ones which have been established for a time sufficient to draw just conclusions as to their influence.

In the ancient prison of New York, (Newgate) recommittals took place (in proportion to the whole number of convictions) as one to nine; in the prison of Maryland as one to seven; in that of Walnut street as one to six; in the ancient Connecticut prison as one to four and in the Boston jail also, as one to six. The

number of recommitments is considerably less in the new prisons at Auburn and Wethersfield. In the former, recommitments form the nineteenth part of the whole number; and of one hundred individuals released from the latter, since its creation, five only have been recommitted for new offences; which gives the proportion of one to twenty.

At Auburn not only those criminals are noted down who are recommitted, but an attempt has also been made to watch the conduct of delivered prisoners who have remained in society. Of one hundred and sixty individuals, in respect to whom it was possible to obtain information, one hundred and twelve have conducted themselves well; the others have returned to bad or at least doubtful habits. (*hh*)

These ciphers, however conclusive they may appear, are the result of too short a period to justify an invincible proof of the efficiency of the system to be deduced from them; but we must nevertheless acknowledge, that they are extremely favourable to the new penitentiaries, and the presumption in their favour, caused by this result, is so much the stronger as the effect obtained perfectly accords with that promised by the theory; it must be added, that in spite of the impossibility of drawing any conclusive argument from the penitentiaries of Sing-Sing, Boston, and others of the same kind, on account of their having been so recently established, it cannot be doubted, that the success of Auburn and Wethersfield, renders that of establishments on the same model, extremely probable.

In offering these statistical documents, we have not compared the number of crimes and recommitments in the United States and in France; persuaded as we are, that the foundation for such a comparison would be imperfect.

The modes of existence in the two countries do not resemble each other, and the elements composing them are essentially different.

A young society, exempt from political embarrassments, rich both by its soil and its industry, should be supposed to furnish less criminals than a country where the ground is disputed foot by foot, and where the crises produced by political divisions tend to increase the number of offences, because they increase misery by disturbing industry.

Yet if the statistical documents which we possess of Pennsylvania, should be applied to the rest of the Union, there are in this country more crimes committed than in France, in proportion to the population. Various causes of another nature explain this result: on the one hand, the coloured population, which forms the sixth part of the inhabitants of the United States, and which composes half of the inmates of the prisons; and on the other hand, the foreigners pouring in every year from Europe, and who form the fifth and sometimes even the fourth part of the number of convicts.

These two facts, explaining the great number of crimes in the United States, make it not a subject of comparison with the number of offences in a country where we are met with no similar facts.

If we should deduct from the total number of crimes, those committed by negroes and foreigners, we should undoubtedly find that the white American population commits less crimes than ours; but proceeding thus, we should fall into another error; in fact, to separate the negroes from the whole population of the United States, would be equal to deducting the poorer classes of the community with us; that is to say, those who commit the crimes. One obstacle is here avoided only to meet with another; in this respect, the only certain, incontestable fact, which we have remarked in the United States, and which may offer an opportunity for comparison, is the peculiar and extraordinary morality of the women belonging to the white race. Out of one hundred prisoners in the United States, we find but four women; whilst with us there are

twenty in a hundred. Now this morality of the female sex must influence the whole society; because it is upon them that the morality of a family chiefly depends.

At all events, as the elements of comparison are otherwise different, we can on the whole but hazard probabilities.

Difficulties abound if we wish to make approximations of this kind between the two nations. The difference which exists between the penal laws of the United States and ours, adds greatly to them.

In the United States, things are punished as crimes which with us are beyond the reach of the laws; and again, our code punishes offences which in the United States are not considered as such. Thus, many offences against religion and morals, such as blasphemy, incest, fornication, drunkenness, &c., &c., are in the United States repressed by severe punishments; with us they are unpunished. Again, our code punishes bankruptcy, against which the laws of the United States have no provisions.

How then can we compare the number of crimes committed in countries the legislation of which is so different? And yet, we must add, that this comparison, were it made exactly, would hardly afford conclusive results: thus, it may well be said, in general, that the number, more or less considerable, of convictions in a country, proves its corruption or its morality. Yet there exist exceptions to this rule, which throw a great uncertainty upon these calculations: thus, in one of the most religious and most moral states of the Union, (Connecticut,) there are more convictions for offences against morals than in any other state. To understand this result, it is necessary to remember that crimes of this nature are punished only where they are rare: in societies in which adultery is frequent, it is not punished. No bankrupts are found in the prisons of the United States; shall we conclude from this that the crime of bankruptcy is never committed there? This would be a strange mistake, because in no country perhaps more bankruptcies take place than there: it is necessary, therefore, in order not to admire on this point the commercial morality of the United States, to know whether a matter is in question which the law regards as a crime. Again, if we know that there are in the United States ten criminals committed for forgery out of one hundred prisoners, we are not authorized to take this as a proof of greater corruption in that country than in ours, in which those sentenced for forgery are but two out of the hundred. In the United States the whole population is in some degree commercial, and in addition, there are three hundred and fifty banks, all emitting paper money; the ingenuity of the forger therefore has in that country a much wider field, and much stronger temptation, which is not the case with us, where commerce is but the business of a single class, and where the number of banks is so small.

There is again a difficulty in comparing the crimes committed in the two countries; it is, that in those cases even, in which the legislation of both punishes the same act, it inflicts different punishments; but as the comparison of crimes is made by that of the punishments, it follows that two analogous results, obtained from different bases, are compared together; which is a new source of mistake.

If it is difficult to compare, for any useful purpose, the number and nature of crimes committed in the United States and in France, it is perhaps still more so to compare the number of recommittals, and to arrive by this comparison at a conclusive result, in respect to the prisons of the two countries.

In general, those recommittals only, which bring back the prisoner to the prison where he has been detained the first time, are calculated in the United States. His return to the same prison, is in fact the only means of proving his relapse. In that country, where passports do not exist, nothing is easier than to change one's name; if therefore a delivered convict commits a new crime under a fictitious name, he can

very easily conceal his relapse, if he is not brought back to the prison where he underwent his first punishment. There are, besides, a thousand means of avoiding the chances of being recognised. Nothing is easier than to pass from one state to another, and it is the criminal's interest to do so, whether he intends to commit new crimes, or has resolved to lead an honest life. We find therefore among a hundred criminals convicted in one state, thirty, upon an average, who belong to some neighbouring state. This emigration is sufficient to make the proof of recommittals impossible. The tie between the various states being strictly political, there is no central power to which the police officers might refer to obtain information respecting the previous life of an indicted person: so that the courts condemn, almost always, without knowing the true name of the criminal, and still less his previous life. It is clear, therefore, that in such a state of things the number of known recommittals is never that of all the existing ones. (ii) The same is not the case with us. There are a thousand ways in France to prove the identity of the indicted and the convicted prisoner, by means of the mutual information which all the agents of the judicial police keep up among themselves; the convictions pronounced by a *cour royal* in the south are known by a court in the north; and the judiciary possesses on this point all the means of investigation which are wanting in the United States. If, therefore, in France, no more recommittals should take place than in the United States, a greater number, nevertheless, would be publicly known; and as the means of proving them in the two countries are so different, it would be useless to compare the number.

All comparisons of this kind then, between America and Europe, lead to no satisfactory result. America can be compared only with herself; yet this comparison is sufficient to shed abundant light upon the question we are considering; and we acknowledged the superiority of the new penitentiary system over the old prisons, when we found that the number of recommittals in the ancient prisons, compared to all convictions, was in the proportion of one to six, and in the new penitentiaries in the proportion of only one to twenty.

CHAPTER IV.

Financial Department.



SECTION I.

Distinction between the Philadelphia and Auburn systems. — The first requires a much more expensive construction. — The latter very favourable to economy. — Difficulties to be avoided. — Plans. — Estimate by Judge Welles. — Is it advisable to have prisons built by prisoners?

AT present, after having stated the principles and effects of the penitentiary system in the United States, with regard to the reformation of the prisoners, it only remains to treat of its result in a financial view.

The latter comprises the manner of constructing prisons, and the expenses of the support of the prisoners, compared to the produce of their labour.

Construction of the Prisons.

We must in this respect distinguish between the systems of Philadelphia and Auburn.

The penitentiary of Philadelphia (Cherry Hill,) will, at the time of its completion, have cost 432,000 dollars; which makes the price of each cell 1624 dollars.

It is true that enormous unnecessary expenses have been incurred in its construction. The greater part had no other object than the ornament of the edifice. Gigantic walls, gothic towers, a wide iron gate, give to this prison the appearance of a fortified castle of the middle ages, without affording any real advantage to the establishment.

Yet even if these unnecessary expenses had been wisely avoided, there would yet remain a considerable amount inherent in the Philadelphia system, which it would have been impossible to avoid. The convict being condemned, according to this system, to constant confinement, his cell must necessarily be spacious and well ventilated, provided with all proper wants, and large enough to permit him to work without much constraint. It is besides necessary that a small yard should be joined to the cell, surrounded by walls, in which he may, each day, during the hours prescribed by the rules, breathe the fresh air. Now, whatever pains may be taken to construct this cell with its appendage in the most economical manner, it must necessarily be much dearer than one that is narrower, without a particular yard, and destined only to receive the convict during night.

The prisons, constructed on the Auburn plan, are infinitely cheaper. Yet there are very considerable differences in the respective costs of their construction.

This disparity seems at first difficult to be accounted for; but upon investigating the causes, we find, that the construction of new penitentiaries is either expensive or cheap, according to the means employed in erecting them.

The penitentiary at Washington, for the District of Columbia, will have cost, when finished, 180,000 dollars. It contains only one hundred and sixty cells, each of which, therefore, will cost 1125 dollars; whilst the penitentiary at Wethersfield established on the same plan, has cost, for two hundred and thirty-two prisoners, 35,000 dollars: so that each cell costs but 150 dollars and 86 cents.

As all public expenses are incurred with great economy in the small state of Connecticut, we might believe that the small expense of the building of the prison is the effect of extraordinary efforts, of which a larger society, occupied with other interests, would not be capable.

But the penitentiaries of Sing-Sing and Blackwell Island, (erected for the same price as that of Wethersfield) in the State of New York, the largest of all the members of the Union, prove that Connecticut has done nothing extraordinary; and the construction of the Baltimore penitentiary has caused no greater expense.

The care which some states take to avoid in this matter every kind of useless ornament, whilst others do not pay the same attention to economy, produces this difference in the expense of construction.

The Washington penitentiary has been built on a sumptuous plan, more fit for a palace than a prison.

The greatest difficulty to be avoided in similar constructions, is the ambition of the architect, who will always strive to erect an edifice of great size, and will reluctantly submit to the adoption of a simple and strictly useful plan. Several states have triumphed over this difficulty, though at Philadelphia, Pittsburgh, and Washington, it has not been avoided.

Of all the establishments founded on the Auburn plan, the construction of the Washington penitentiary has been the most expensive.

The reason of this circumstance perhaps is to be found, in the nature of the authority itself, which directed this building to be constructed.

Particular states of the Union adopt generally the simplest plans for their prisons: they superintend the execution, and aim at strict economy in the most minute details. On the contrary, the administration at Washington, more elevated in its views, admits more easily of great designs; and as it is absorbed by a number of general interests, it is obliged to leave every thing which belongs to the execution of the plan, to agents whom it has neither the time nor the power to superintend.

All practical men in the Union, believe that the Auburn system satisfies all claims of economy as far as regards construction.

In those prisons in which the whole discipline consists in the strength of the walls and the solidity of bolts, heavy walls and strong locks are requisite to master the prisoners.

In the new penitentiaries, so much material strength is not necessary, because it is not the point against which the prisoners direct their continual efforts. The moral superintendence forms the chief object with which they have continually to struggle. Isolated by the cell or by silence, they are moreover reduced to their individual strength; to curb them, therefore, does not require so much material force as if they were able to unite their efforts.

The necessity of having a cell for each prisoner, multiplies indeed the walls, and requires a greater extent of building. But this increase is compensated by a circumstance favourable to economy.

As the prisoners have no communication whatever with each other, every classification becomes useless, and it is not any longer necessary to have a separate division for young convicts, another for criminals more advanced in age, and another for recommitted convicts, &c.; in short, the principles of the penitentiary system being directly opposed to every communication of the prisoners with each other, there is no yard for recreation required in the modern penitentiaries. Much, therefore, is saved in building and enclosing walls, which exist, or at least ought to exist, in the system of our prisons.

In short, it may be said, that the construction of a modern penitentiary may be effected at a cheap rate, if proper views of economy are adopted.

Mr. Welles, one of the inspectors of the Wethersfield prison, whose correct views and experience we have always appreciated, has told us repeatedly, that in this affair every thing depended upon economy in the most minute details. He thinks that a penitentiary of five hundred cells might be constructed for about 40,000 dollars; which would make eighty dollars for each cell.

It would be impossible to estimate exactly the cost of a prison in France, by that of one in the United States.

However, we believe that this expense would be about the same in France as in America. Because if it is true that the raw materials are much dearer with us than in the United States, it is also incontestable, that wages for daily labour are much higher in America than in France.

We have seen that in the United States the prisoners are sometimes employed to build the prisons. The penitentiaries of SingSing, Blackwell Island, and Baltimore, have been thus erected: yet there are many persons in America, who believe that this is not the most economical way, and that it is more profitable to have them built by free labourers. This opinion seems at first glance to be opposed to the nature of things, particularly in a country where labour is so dear as in the United States. But it is answered, that for this very reason, viz. the high price of labour, manufactured articles are sold at a high price. Thus the labour of the prisoners applied to productive industry, yields more for the state than it has to spend for the work of free labourers.

This question, therefore, must be decided according to place and circumstances. Its solution, says Judge Welles of Wethersfield, depends likewise upon the situation of the prisoners: it is better to leave those in their workshops whose labour is applied to branches which are very productive; but such as are not particularly skilful may be used for the rougher kind of labour in the construction of a penitentiary.

In France, the construction of prisons by the prisoners, might be still more advantageous than in America, if we look at the question simply on account of its economy, and disregard the difficulties which, with us, the superintendence of prisoners occupied in building their own prison, would present.

The rate of manufactured articles does not present in France the same chances of profit as in the United States, and the prisoners, therefore, may be employed in the construction of the prison, without risk of loss in the productiveness of their labour.

We are sure that the walls to be erected would be profitable, since they have their destination fixed before being built: whilst nothing is more accidental and uncertain than the future profit yielded by the sale of merchandise.

If we employ free workmen, we pay their wages without diminution; whilst prisoners, occupied with any branch of industry, work with all the chances of loss and depreciation, incident to manufactured articles. If, on the contrary, the prison is built by the prisoners themselves, the fruit of their labour is immediately collected; this labour does not produce a gain, properly so called; but it dispenses with an unavoidable charge.

We are well aware that in America the case is not the same; there, manufactures stand a favourable chance on account of the various fields opened to industry: the object there is to gain, whilst we only aim at avoiding losses. Finally, it is a great advantage in France to be able to employ the prisoners in a labour useful, and sometimes necessary, without injuring by way of competition the manufactories of free labour.

SECTION II.

Expensive support of the ancient prisons. — The new penitentiaries yield a revenue to the state. — Daily expense of the new prisons. — Expense of food only. — Cost of surveillance. — Contract and régie. — Combination of these two systems of administration.

Annual Expense of the Prisons A

THE new system in practice in the United States, promises also great advantages on the score of *annual* expense; its effects have already, in this respect, surpassed the expectations of its promoters.

As long as the ancient prison discipline was in practice, the support of the prisoners was in all the states a source of considerable expense. We will cite but two instances: From the year 1790 to 1826, the state of Connecticut has expended for its prison, (Newgate) 204,711 dollars (see Statistical Tables, Financial Division), and the state of New York has paid for the support of the ancient prison of Newgate, during twenty three years, (from the year 1797 to 1819,) 646,912 dollars. The new system was established in 1819 in the state of New York, and in 1827 in Connecticut; in the former, the expenses immediately diminished, in the latter they changed directly into an annual revenue. (See Statistical Tables, Financial Division, No. 19.)

At Auburn, the income resulting from the labour of the prisoners, has, during the last two years, exceeded the expenses of support; and the period is already foreseen, when, after the construction of Sing-Sing shall be finished, the labour of its prisoners, applied solely to productive industry, will cover the expenses of the prison.

From the first year of its institution, the new Connecticut prison (Wethersfield,) has produced 1,017 dollars 16 cents, expenses deducted; every year the revenue has increased; and the gain of the year 1831, was 7,824 dollars 2 cents.

In short, the new penitentiary, which cost so much, produced during three years and a half, expenses of all kinds deducted, a net income of 17,139 dollars 53 cents.

The Baltimore penitentiary has, during three years, beginning with the day of its institution, yielded to the state of Maryland 44,344 dollars 45 cents, all expenses deducted.

These results, assuredly, are not owing altogether to the penitentiary system: and that which proves it, is the circumstance, that the Baltimore prison was productive even previously to the introduction of the penitentiary system; we allow even, that the best penitentiary is not that which yields the most; because the zeal and talent of the prisoners in the workshops, may be stimulated to the detriment of the discipline. Yet we are obliged to acknowledge, that this system, once established, is powerful, in maintaining order and regularity in the prison; it rests on an uninterrupted watchfulness. The labour of the prisoners, therefore, is with such a system more constant and more productive.

At all events, after having seen the above statements, it would be unreasonable to reject the penitentiary system as expensive, since the discipline which has been established in the United States with so little expense, supports itself in some states, and has become in others a source of revenue, (*jj*)

Every prisoner in the new penitentiaries costs, on an average, for his support, food, clothing, and *surveillance*, fifteen cents; in Wethersfield and Baltimore, the support of the prisoner is the cheapest; at Auburn the dearest: the food costs in the various penitentiaries, on an average, five cents a day per head. At Wethersfield it costs but four cents, and at Sing-Sing, five cents.

The expenses for clothing and bedding, amount in general to nothing, owing to the care which is taken to have them made in the prison by the prisoners themselves. The expenses of *surveillance* amount on an average to six cents a day per head. At Auburn they are the least, and at Sing-Sing the most.

In all the new prisons, the expenses of *surveillance* are greater than those incurred for food and clothing. All economy on this point would be destructive to a system which rests entirely upon discipline, and consequently upon the good choice of officers.

We see that in all the new prisons, the sum total of the expense, though varying in some points, is nevertheless always, nearly the same; and it is clear, that as long as the administration of these establishments is directed by men of probity, and with similar economy, the expenses of each year will not vary much: there is a minimum below which it cannot fall, without becoming detrimental to the well being of the prisoners; and a maximum beyond which it ought not to rise, without extravagance in the administration, or misconduct on the part of the officers.

The same is not the case with a production which by nature is variable. We may certainly presume that the prison which produces most is that in which the prisoners work most. Yet the difficulty attending the sale of the articles, produced by their labour, often defeats this presumption. Even in the United States, where labour is so dear, the demand for articles undergoes numerous variations, which raise or lower their price.

In short, the financial administration of Auburn, Wethersfield, Sing-Sing, and Baltimore, has appeared to us to be directed with extreme skill; and the discretionary power with which the superintendents are invested, is perhaps one of the principal causes of economy. They govern the prison, as it seems best to them, under the superintendence of the inspectors. They are responsible, but they act freely.

The administration of these prisons, which combines the system by contract with the *régie* (management of sale, &c., by its own officers,) appears to us very conducive to economy.

There are in our prisons many things for which a very high price is paid to the contractor, and which are obtained for very little expense in a prison which manages its own affairs.

At Auburn (in 1830,) one hundred and sixty prisoners out of six hundred and twenty, are occupied in the service of the prison: they make every thing which serves for the clothing, linen, and shoes, and conduces to the neatness and order of the prison; only four hundred and sixty-two work for the contractor.

At Wethersfield, the number of prisoners who work for the contractor is proportionately still smaller. It is believed in America that it is more profitable to employ a large number of contractors, because more favourable agreements can be made for each branch of industry.

Particular care is taken never to make contracts for any great length of time: the contractors, therefore, cannot exact contracts disadvantageous to the prison, under the pretence of injurious contingencies to which the possible depreciation of the manufactured articles may expose them; the duration of a contract often does not exceed a year; it is sometimes of less duration for the labour, and generally of six months only for the food.

The contractor pays for a day's labour of a prisoner, about half of what he would pay to a free workman. (kk)

The constant renewal of the contracts makes' it possible for the administration to seize upon all the chances of economy: it profits by the cheapness of provisions; and

if the price of manufactured articles is high, it obtains better conditions from the contractors to whom it hires the labour of the prisoners: it makes these calculations for each contract, and must on this account be acquainted with the rise and fall of the various branches of industry; one often prospers to the disadvantage of another; and in such a case the prison will regain from one contractor the loss which it has suffered with another.

It is evident that such an order of things requires in the superintendent a constant attention, an accurate knowledge of affairs, and a perfect probity, which procures him the confidence of the state, and of all those who have business with him. The superintendent is not only the director of a prison, but he is also the agent who, attentive to the movements of commerce, must watch without interruption how he can apply the labour of the prisoners in the most advantageous way, and find the most profitable sales for his products. This system, which unites the contract and the *régie*, necessarily produces a responsibility of a very complicated character; and on this account will not meet with the approbation of those who, in all matters of administration, wish to see but one individual; in the accounts but one column, and in this column but one number; this simplicity is not to be found in the American prisons. It requires in the superintendent constant activity, in the inspectors a minute *surveillance*, and in the comptrollers of the state thorough examination.

We may yet remark, that this variety of duties, this power of governing the prison, or of making contracts for its labour, this vast administration at once moral and physical, serve to explain also, why the office of superintendent is sought for by persons at once intelligent and respectable.

PART II.

CHAPTER I.

Expensiveness of our prisons: reason of this circumstance. — They do not correct the prisoners, but they corrupt them; cause of this corruption; intercourse of the prisoners among themselves. — Bad use made of the prisoner's saving, (pécule). — The system of our prisons is fatal to the life of the convicts.



DURING THE YEARS 1827, 1828, 1829, and 1830, government paid 3,300,000 francs every year for the support of 18,000 prisoners in the *maisons centrales* (state prisons.) Thus the prisons, which, in the United States, yield an income, form with us a heavy charge upon the public treasury. This difference is owing to various causes.

The discipline of our prisons is less severe, and the labour of the prisoners necessarily suffers from every relaxation of discipline.

The saving (*pécule*) of the prisoners absorbs, with us, two-thirds of the produce of their labour, whilst in America it does not exist at all.

Finally, the manufactured articles are sold in France with much more difficulty, and with less profit, than in the United States.

The object of punishment is to punish the guilty and to render them better; but as it is at present, it punishes little, and instead of reforming, it corrupts still more. We would develop this melancholy truth, if we believed that there is a single individual who contests it. Of 16,000 prisoners, at present in the *maisons centrales*, there are 4,000 held upon recommitments. And it is now acknowledged by government itself, that the number of recommitments goes on continually increasing. The same was formerly the case in America; but since the new penitentiary system has been established, the number of recommitments diminishes.

The corruption of our prisons is owing chiefly to two causes. The first and the most important, is the free communication of the prisoners both night and day. How can a moral reformation of the prisoners take place in the midst of this assemblage of all crimes and all vices? The convict who arrives at the prison half depraved, leaves it in a state of complete corruption, and we may well say that in the bosom of so much infamy, it would be impossible for him not to become wicked.

The second cause of the depravity of the prisoners is found in the bad use which they make of their saving. They spend that part of it which is allowed to them in the prison, in excess of food or other superfluities; and thus contract fatal habits. Every expense in the prison is destructive of order, and incompatible with the uniform discipline, without which there is no equality of punishments. The saving is of no real use whatever to the convict before he leaves the prison. And we must add, that, in the actual state of things, that part even of the saving which is given to the convict on his leaving the prison, is neither more useful than that which he has spent in the prison. Had he contracted, during his imprisonment, habits of order, and some principles of morality, the sum, sometimes very considerable, then placed at his disposal, might be employed in a judicious way, and for his future benefit. But, corrupted as he is by his imprisonment itself, he hardly feels himself free, than he hastens to spend the fruit of his labour in debaucheries of all kinds; and continues this kind of life until the necessity of recurring to crime brings him back to the arm of justice, and thence to the prison.

The prison, the system of which is corrupting, is at the same time fatal to the life of the prisoners. With us one prisoner dies out of fourteen in the *maisons centrales*. In the penitentiaries of America, there dies on an average one out of forty-nine.

In these prisons, in which death is so rare, the discipline is austere, the law of silence is imposed upon the prisoners: all are subject to a uniform discipline, and the produce of their labour is not lost either in debaucheries or superfluous expenses; the most rigorous punishment reaches, without pity, every one who breaks orders; not one hour of rest is granted them during the day; and the whole night they are in solitude.

In our prisons, where death makes so many ravages, the prisoners talk freely together; nothing separates them during day or night; no severe punishment is inflicted upon them. Every one may, by the earning of his labour, alleviate the severity of his imprisonment; and finally, he can enjoy hours of recreation. * * * * *

This severe discipline of the American penitentiaries, this absolute silence imposed upon the prisoners, this perpetual isolation, and the inflexible uniformity of a system, which cannot be alleviated for one without injustice to others, do they not altogether constitute a rigour which is yet full of humanity?

The contagion of mutual communications, which in our prisons corrupts the inmates, is not more fatal to their souls than their bodies.

We notice here the principal vices which have most attracted our attention in our central prisons. It is easy to see that we do not present them as a complete picture; moreover, we add nothing on the “houses of arrest” and “of justice,” the other departmental prisons and the bagnes; we only speak of the central prisons destined for great criminals, because they alone contain a population analogous to that within the penitentiaries of America.

CHAPTER II.

Application of the penitentiary system to France. — Examination of the objections made to this system. — Theoretically it seems preferable to all others. — What obstacles it would have to overcome in order to become established among us. — These difficulties are in the state of things, in the customs, and in the laws. — In the state of things: the existence of prisons badly constructed, which it would be necessary to supplant by others. — In the customs: repugnance of public opinion to corporal punishment; and difficulty of procuring for the system the assistance of religious influence. — In the laws: punishments, inflicting infamy, variety of ways of detention and administrative centralization. — Judication of a system of local administration. — The penitentiary system, even if established in France, would not produce all the effects which have resulted from it in the United States. — Situation of delivered criminals. — Surveillance of the high police. — Agricultural Colonies. — Even if the system should not be introduced entirely, some of its advantages may be borrowed. — A model Penitentiary. — Recapitulation.



WOULD IT BE possible to establish the American penitentiary system among us?

It seems to us that this system, considered theoretically, (if we abstract the particular difficulties which its execution would meet with in France,) is both sound and practicable.

Various objections are made against it, which we shall examine. Many persons see in the penitentiary system a philanthropic conception which has for its sole object the amelioration of the physical situation of the prisoners; and as they believe that the criminals are not too severely punished in their present prisons, they reject the system which would make them more comfortable. This opinion rests upon a fact: for a long time those who have raised their voices in France in favour of reforms in the prison discipline, have called public attention simply to clothing, food, and all those matters which contribute to make the convicts more easy. So that in the eyes of a great number, the adoption of a penitentiary system, which makes innovations necessary, tends only to the physical amelioration of the prison.

Others engaged in a way entirely opposite, believe that the condition of the prisoners is so unfortunate that it would be wrong to aggravate it: and if they hear of a system which is founded on isolation and silence, they say that society has not a right to punish men with such severity.

Finally, there is a third class of persons who, without expressing themselves on the advantages or inconveniences of the penitentiary system, consider it as a eutopian scheme, destined only to enlarge the number of human errors. It must be acknowledged that the opinion of the latter has been in some cases supported by the writings of the most distinguished publicists, whose mistakes in this matter have been received together with their soundest opinions.

Thus, Bentham wishes in his *panoptic* prison the continual sound of music, in order to soften the passions of the prisoners. Mr. Livingston asks for the young prisoner, and for the convicts themselves, a system of instruction almost as complete as that established in any of the free academies; and Mr. Charles Lucas indicates, as a mode of executing the punishment of imprisonment, a penitentiary system which it would be difficult to reconcile with the principles essential in criminal matters.

Is it just to blame the severity or mildness of the penitentiary system? Must we condemn this system on the exaggeration of writers who, preoccupied with philosophical doctrines, have not guarded themselves against the danger attending any theory if carried to its full consequences?

The new system, on the contrary, seems to us to have been conceived for the very object of avoiding those excesses with which it is reproached: freed from severities which are not necessary for its success; unincumbered by indulgences which are asked for only by mistaken philanthropy.

Finally, its execution presents itself with all the advantages of extreme practical simplicity.

It is believed that two depraved individuals, kept in the same place, must corrupt each other; they are therefore separated. Their passions, or the bustle of the world, had deafened or misled them: they are isolated and thus brought to reflect. Their intercourse with the wicked had perverted them; they are condemned to silence: idleness had depraved them; they are made to work. Misery had conducted them to crime; they are taught a useful art. They have violated the laws of their country, a punishment is inflicted upon them; their life is protected, their body is safe and healthy: but nothing equals their moral suffering. They are unhappy, they deserve to be so; having become better, they will be happy in that society whose laws they will have been taught to respect. This is the whole system of American penitentiaries.

But, it is objected, that this system, tried in Europe, has not succeeded; and to prove it, the instances of Geneva and Lausanne are mentioned, where penitentiary systems have been established at great expense, and without producing the results which were expected from it for the reformation of the convicts.

We believe that the example of that which has been done in Switzerland ought in no respect to influence what France might do. In fact, the same mistake in respect to the construction of prisons, has been fallen into in Switzerland, which has not been always avoided in the United States, viz. the desire of elevating architectural monuments instead of simply constructing useful establishments: the expense incurred for the Swiss penitentiaries, therefore, ought in no way to be taken as a basis for calculating the probable expenses of prisons of the same nature in France. On the other hand, if the system of these penitentiaries has not been efficient for the reformation of prisoners, we must not seek for the cause in the system of the United States: it is a mistake to believe that the discipline of the prisons in Geneva and Lausanne is the same with that of the American penitentiaries. The only point common to both is, that the prisoners pass the night in solitary cells: but that which makes a difference of primary importance in the penitentiary systems of the two countries, is, that in the United States the discipline rests essentially on isolation and silence, whilst in Switzerland the prisoners have free intercourse with each other during the day.

It cannot be denied that the liberty of communication granted to the prisoners, changes the very nature of the American system, or to speak more correctly, it produces a new system without any resemblance to the latter.

As for us, as much as we believe that the system founded on isolation and silence, is favourable to the reformation of criminals, we are equally inclined to believe that the reformation of convicts who communicate with each other is impossible.

It seems to us, therefore, that, speaking in the abstract, the penitentiary system of the United States (the superiority of which over every other prison discipline appears incontestable,) presents itself to France with all the chances of success which a theory can offer, the first experiment of which has already succeeded. In stating this opinion, we are not blind to the difficulties which this system would have to overcome in being established with us.

These difficulties are in the nature of things; in our customs, and in our laws.

The first of all is the existence of another order of things, founded upon a different basis, and upon principles diametrically opposed. The American system has for its foundation the separation of the prisoners, and for this reason we find in each penitentiary as many cells as convicts. In France, on the contrary, the system of cells established in a general way is unknown; and in all our prisons, the greater part of the convicts are huddled together during night in common dormitories. This circumstance alone is sufficient to render, for the present, a system which rests entirely upon the isolation of the prisoners, impracticable with us. Should, therefore, this system be adopted, new prisons, constructed upon the model of the modern penitentiaries, must be raised; but here a grave difficulty presents itself, resulting from the first expenses of their construction.

We are far from believing that the expense of this would be as considerable as is generally presumed. Those who see in Paris a model prison, destined for four hundred prisoners, and costing 4,000,000 of francs, conclude with apparent reason, that it would require 320,000,000 of francs, to lodge, upon the same plan, 32,000 criminals; i. e. 10,000 francs for each. But we must remember, that this enormous expense has been occasioned by the deplorable extravagance with which the construction of that prison was attended.

The elegance, the regularity of its proportions, and all the ornaments with which it is embellished, are of no use whatever for the discipline of the establishment: they exhausted the public treasure, and are of service to the architect alone, who strove to erect a monument, to hand down his name to posterity.

We must remark again that a distinction ought to be made between the expenses of construction upon the Philadelphia and the Auburn system: we have acknowledged, that there are great advantages resulting from the plan of absolute confinement adopted in Pennsylvania, and if the question were only on a theoretical point, perhaps we should prefer it to the Auburn system; but the expense of penitentiaries built upon the Philadelphia plan is so considerable, that it would seem to us imprudent to propose the adoption of this plan for our country. Too heavy a burthen would be thrown on society, for which the most happy results of the system could hardly offer an equivalent. Yet the Auburn system, whose merit in theory is not less incontestable, is, as we have shown above, much cheaper in its execution; it is therefore this system which we should wish to see applied to our prisons, if the question were only to choose between the two.

But the Auburn system itself could not at once be established in France without great expense, which certainly would be incomparably less than that incurred for the prison which we just mentioned; we believe even that the construction, if judiciously directed, of a modern penitentiary, would in the whole cost no more here than in the United States, (*mm*) Yet, however great the economy might be, which would preside over such an undertaking, it is certain that more than 30,000,000 of francs would be necessary for the general establishment of this system: and it will easily be believed that France would not burthen her budget with a similar item in the midst of political circumstances, which require from her still more urgent sacrifices.

Is it not also to be feared that the grave interests which absorb the treasures of France, are injurious in another way to the reform of prisons? Do not political events preoccupy the minds of men to such an extent, that questions, even the most important, on internal reforms, excite public attention but feebly? Talent and capacity are directed towards one single object — politics. Every other interest meets with indifference, and the result of this is, that the most talented men, distinguished writers, experienced members of the administration — in one word, all those who exercise

influence on public opinion, spend their energy in discussions useful to the government, but not conducive to the welfare of society. Shall we not fear the consequence of this disposition in respect to the penitentiary system? Will not this institution, which requires for its execution public attention and favour, be received with coolness?

But even if the pecuniary and political objections, just indicated, did not exist, and nothing in the actual state of things were opposed to internal reforms, the introduction of the penitentiary system into France would nevertheless meet with grave difficulties.

The American discipline is, as we have seen, principally supported by corporal punishment. But is it not to be feared that a system, of which these punishments are the most powerful auxiliary, will be ill received by public opinion? If it is true, that with us an idea of infamy is attached to this punishment, how could it be inflicted on persons whose morals it is our intention to improve? This difficulty is a real one, and it appears still more serious, if we consider the nature of the discipline itself, which is to be maintained. Silence is the basis of the system: would this obligation of absolute silence, which has nothing incompatible with American gravity, be so easily reconciled with the French character? If we believe Mr. Elam Lynds, the French are, of all nations, those who submit the easiest to all the exigencies of the penitentiary system: yet the question seems to us yet undecided, and we do not know to what point Mr. Elam Lynds has had an opportunity of judging of the docility of French convicts in general, by observations made in American prisons, where he has seen but a small number of French dispersed among a multitude of Americans.

As for ourselves, without pretending to solve this problem, we believe that the law of silence would be infinitely more painful to Frenchmen than to Americans, whose character is taciturn and reflective; and for this reason, it seems to us that it would be still more difficult with us than in America, to maintain the penitentiary discipline whose foundation is silence, without recurring to corporal punishment. We are the more induced to believe so, as the discipline of American penitentiaries is favoured by another circumstance, on which we cannot calculate. There is a spirit of obedience to the law, so generally diffused in the United States, that we meet with this characteristic trait even in the prisons: without being obliged to indicate here the political reasons of this fact, we only state it as such: but this spirit of submission to the established order does not exist in the same degree with us. On the contrary, there is in France, in the spirit of the mass, an unhappy tendency to violate the law: and this inclination to insubordination seems to us also to be of a nature to embarrass the regular operation of the discipline.

The penitentiary system, to which it would be difficult to give, in France, the physical support of stripes, that would seem in this country more necessary than in others, would perhaps be deprived also of a moral auxiliary, which contributes in the United States much to its success.

In America, the progress of the reform of prisons has been of a character essentially religious. Men, prompted by religious feelings, have conceived and accomplished every thing which has been undertaken; they were not left alone; but their zeal gave the impulse to all, and thus excited in all minds the ardour which animated theirs. So also is religion to this day in all the new prisons, one of the fundamental elements of discipline and reformation: it is her influence alone which produces complete regeneration; and even with regard to reformations less thorough, we have seen that it contributes much to obtain them.

It is to be feared that in France the penitentiary system would not find this religious assistance.

Would not the clergy receive with lukewarmness this new institution, on which philanthropy seems to have seized?

And on the other hand, if the French clergy should show themselves zealous for the moral reformation of the criminals, would public opinion be satisfied to see them charged with this duty?

With us there exist, in a great number of persons, prejudices against religion and her ministers, which are unknown in the United States, and our clergy in turn are subject to impressions unfelt by the religious sects of America.

In France, where, during a long period, the altar has struggled in concert with the throne to defend royal power, the people are not yet accustomed to separate religion from authority, and the feelings directed against the latter usually extend to the former.

It thus happens, that in general public opinion shows itself little favourable towards any thing protected by religious zeal; and the clergy, on their part, show little sympathy for any thing which presents itself under the auspices of public favour.

In America, on the contrary, church and state have always been separated; and political passions erect themselves against the government, and never against religion. For this reason, religion there always remains out of the struggle; and there exists an absence of all hostility between the people and the ministers of every sect.

We must add an observation on this point: it is, that in the United States, should the support of the clergy fail, the reform of prisons would not thereby be deprived of the assistance rendered by religion.

In fact, society in the United States is itself eminently religious — a circumstance which has a great influence upon the direction of penitentiaries; a multitude of charitable persons, who are not ministers by profession, sacrifice nevertheless a great part of their time to the moral reformation of criminals; as their religious belief is deeply rooted in their customs, there is not one among all the officers of a prison who is destitute of religious principles. For this reason, they never utter a word which is not in harmony with the sermons of the chaplain. The prisoner in the United States, therefore, breathes in the penitentiary a religious atmosphere, and is more accessible to this influence, because his primary education has disposed him for it.

Generally speaking, our convicts have not such favourable dispositions, and without the walls of the prison, religious ardour is met with in the ministers of religion only.

If they are kept from the penitentiary, the influence of religion will disappear: philanthropy alone would remain for the reformation of criminals. It cannot be denied that there are with us generous individuals, who, endowed with profound sensibility, are zealous to alleviate any misery, and to heal the wounds of humanity: so far, their attention, exclusively occupied with the physical situation of the prisoners, has neglected a much more precious interest, that of their moral reformation. It is clear, however, that called to this field, their charity would not be tardily dispensed, and their efforts would undoubtedly be crowned with some success. But these sincere philanthropists are rare; in most cases philanthropy is with us but an affair of the imagination. The life of Howard is read, his philanthropic virtues are admired, and it is confessed that it is noble to love mankind as he did; but this passion, which originates in the head, never reaches the heart, and often evaporates in the productions of the pen.

There are, then, in our customs and morals, and in the actual disposition of the people, moral difficulties, with which the penitentiary system would have to struggle, if ever it could be established such as it exists in the United States. These obstacles

certainly would not always exist. A lasting public prejudice against religion and her ministers, is not the natural state of things; and we do not know what point a society may reach, without the assistance of religious belief. But here we must not go beyond the actual state of things; and among the difficulties actually existing, which would injure the penitentiary system in France, that which we have just pointed out would without contradiction be one of the gravest.

Our legislation also presents difficulties.

The first results from the very nature of some of our penal laws.

At the time when the brand was prescribed by our code, the penitentiary system could not have been established; because it would have been contradictory to pursue the moral reformation of criminals who had been disgraced already with indelible infamy. This punishment has disappeared from our laws, and its abolition, which reason and humanity imperiously claimed, is one impediment the less to the efficacy of a good prison discipline. But there are yet some provisions in our penal code, which are not less irreconcilable to a complete system of reform. We mean the infamy attached to most punishments, and their great diversity.

There are in our laws eight punishments which are expressly called infamous; without courting public exposure, which is considered only as accessory to certain punishments, and that of the ball, which only figures in the law as a mode of enforcing labour. (Articles 6, 7, 8, 15, and 22, of the penal code.)

If you attach infamy to a perpetual punishment, we see little inconvenience in it, provided the principle of perpetuity is once admitted. But is it not an inconsistency, to declare by judgment a person infamous, who may at some future period reappear in society. To be logical, the law should also declare, that at the expiration of the punishment the prisoner should receive back his honour and his liberty. It does not so, because the infamy so easily imprinted on the forehead of the guilty, cannot be effaced with the same facility. However this may be, the perpetual dishonour attached to a temporary punishment, seems to us little compatible with the object of the penitentiary system, and we do not know how it would be possible to awaken sentiments of honour and virtue in those whom the law itself has taken care to disgrace and to debase. In order to make, in this respect, our penal legislation agree with the essential principles of the penitentiary system, few changes would be required; it would be sufficient, not to call any longer the punishments pronounced by the code infamous, and in all cases to spare the convict the transitory shame of the pillory, and the lasting humiliation of hard labour in public.

It would be necessary, lastly, to abolish, if not the diversity of punishments, at least the difference which exists in the manner of suffering them.

The variety of punishments and of imprisonment, prescribed by each of them, have rendered necessary a great number of different prisons. As there are criminals of various degrees, and as they are thrown together in our prisons, it has been justly believed that it would be immoral to confound all, and to place under the same roof, in the same workshop, and in the same bed, the man who has been sentenced to twenty years of forced labour, and him who has to undergo but one year's imprisonment. There is, therefore, a separate prison for the galley slaves, another for *réclusionnaires*, (simply); and if the law were strictly executed, there would be a third class of prisons, for persons sentenced for police offences to more than a year's imprisonment, and a fourth class, for those whose confinement would be for less than a year. These classifications, the reason of which we understand, if in principle the assemblage of the prisoners is admitted, become evidently useless, if the system of separation during night and silence during day is introduced. This system once

established, the least guilty of all the convicts may be placed by the side of the most consummate criminal, without fearing any contamination.

It is even well to unite the criminals of various kinds in establishments of the same nature; all are subject to a uniform system; punishment varies only in its duration. We thus lose the exceptionable system of the *bagnes*, and see the government of the French prisons freed from this strange anomaly, which places the third of all convicts under the direction of the minister of the marine.

It would then be necessary, in order to put our legislation in harmony with the penitentiary system, to abolish those provisions in the penal code which prescribe distinct prisons, subject to a special system, for each species of convicts.

The second obstacle in our laws, is the too great extent to which the principle of centralization has been carried, forming the basis of our political society.

There are, no doubt, general interests, for the conservation of which the central power ought to retain all its strength and unity of action.

Every time that a question arises concerning the defence of the country, its dignity abroad, and its tranquillity within, government ought to give a uniform impulse to all parts of the social body; this is a right which could not be dispensed with, without compromising public safety and national independence.

But however necessary this central direction respecting all subjects of general interest may be to the strength of a country like ours, it is as contrary, it seems to us, to the development of internal prosperity, if this same centralization is applied to objects of local interest.

It has appeared to us, that the success of the new prisons in the United States, is principally owing to the system of local administration under the influence of which they have originated.

In general, the first expenses of construction are made with economy; because those who execute the plan, pay also the expenses. Little mismanagement is to be feared from the inferior agents, because those who make them work are near to them; and even after the system which they have thus introduced is put into practice, they do not cease to watch its operation. They are occupied with it as with their own work, and one, in the success of which, their honour is interested.

As soon as a state has founded a useful establishment, all others, animated by a happy spirit of emulation, show themselves zealous to imitate it.

Would our laws, and our customs, which leave every thing to the central power, offer to the penitentiary system the same facilities for its foundation and support among us? We do not believe it.

If the question were, of enacting a law, this centralization would be far from throwing difficulties in the way; in fact, it would be much easier for our government to obtain from the chambers, the adoption of the penitentiary system for all France, than it has been in America, for the governors of the various states, to get this same principle sanctioned by the various legislatures, without whom it could not be acted upon.

But after this principle has been adopted by law, it yet remains to be executed; it is here, where with us the difficulties begin.

It is to be feared that the building which the government would cause to be erected for this purpose, would not be on a very economical plan; and that the expenses of construction, superintended by secondary agents, would much exceed the original estimates. If the first experiments prove too expensive, they will discourage public opinion, and the most zealous partisans of the penitentiary system. Supposing these first difficulties conquered, is not the indifference of the different communities

towards the success of an establishment which is not their own work, to be feared? and yet this system cannot prosper without the especial zeal of the officers of the prison. Finally, how could the central power, the action of which is uniform, give all those modifications to the penitentiary system, which are necessary on account of local customs and wants?

It seems to us difficult to expect the penitentiary system to succeed in France, if its foundation and erection are to be the work of government, and if it should be thought sufficient to substitute for the central prisons (*maisons centrales de détention*) others built merely on a better plan.

Would not the chances of success be far greater, if the care of constructing, at their own expense, and of directing (according to certain general principles expressed in a law common to all) the prisons of all kinds, (those destined for great criminals not excepted) were conferred upon the departments themselves?

The laws of 1791 laid down the principle, that the superintendence of the prisons belongs essentially to the municipal authority, and their direction to the administrative authority of the department. These same laws prescribe, as to the administration of the prisons, a great number of important innovations, and contain even the germ of the penitentiary system since adopted in the United States.

But the principles thus proclaimed, were but imperfectly executed: as soon as Bonaparte had been invested with consular dignity, he decreed the establishment of "central houses of detention," without taking the pains to cause the abolishment by the constitutional powers, of the laws contrary to this decree. This institution was destructive to all local direction and superintendence. In fact, most of the central prisons now existing, are nothing but ancient convents dispersed through France, some near towns, others in the midst of fields.

Bonaparte, however, declared in 1810, that each department should have, besides the "houses of justice and arrest," a prison destined to contain prisoners convicted for police offences.

If, then, the system of one general prison for each department should be adopted, we would return to the principle of the laws of 1791; and we should extend to all criminals the local imprisonment, which Bonaparte himself intended to establish for those convicted of police offences.

This extension would be without inconvenience in regard to prison discipline, since we always reason on the supposition of a change in the penitentiary system, founded on silence and isolation of the prisoners.

Government depriving itself of the privilege of directing the central prisons, would abandon a prerogative which is but onerous to itself, without being beneficial to the departments. It would retain a right of impulse, control, and superintendence; but instead of acting itself, it would make others act.

We here only throw out hints of a system, which, to be adopted, ought to be matured; we have the certainty of that which exists being bad; but the remedy seems to us not so certain as the existence of the evil.

Our prisons created and entirely governed by a central power, are expensive and inefficient for the reformation of the prisoners: we have seen in America, cheap prisons, in which all contamination is avoided, springing up in small states under the influence of local authorities: it is under the impression of this contrast that we write.

We are well aware that the situation of the various American states and that of our departments, is not the same. Our departments possess no political individuality; their circumscription has been to this day of a purely administrative character. Accustomed to the yoke of centralization, they have no local life; and we must agree, that it is not

the duty of governing a prison which would give them the taste and habits of individual administration; but it is to be hoped that "political life" will enter more into the habits of the departments, and that the cares of government will have, more and more, a tendency to become local.

If our hopes in this respect should be realized, the system which we indicate would become practicable, and the penitentiary system in France would find itself surrounded by a great many favourable circumstances, which, in the United States, have effected its success.

Each department having its central prison, would only contribute to the support of its own convicts; whilst at present the rich and well populated department, whose inhabitants commit few crimes, pays more for the support of central prisons, than the poor department, whose population, less numerous, furnishes more criminals.

If each department should construct its own prison, it would vote with less repugnance the funds which it would itself dispose of. The construction, which would be its own work, would, undoubtedly, be less elegant and less regular than if it had been directed by the central power, assisted by its architects. * * * * But the beauty of the fabric adds little to the merit of the establishment. The great advantage of a local construction would be to excite the lively interest of its founders. The French government, acknowledging how necessary local direction and superintendence are for the prosperity of the prisons, has tried at various times to interest the departments in the administration of their prisons; but its attempts have always been without success. Whatever government may do, the various bodies will never take an interest in that which they have not made themselves.

Would not this constant watchfulness, this continual and mute care, this constant solicitude and zeal, indispensably necessary to the success of a penitentiary prison, be extended to an establishment created by the department, the witness of its birth, its development, and its progress?

Among the difficulties which would be opposed to the execution of this system, there are some which are perhaps not so serious as some think, and which we believe it our duty to indicate. It is feared, with reason, that by increasing the number of central prisons, the expense of their construction would proportionally increase. In fact, eighty prisons destined to contain 32,000 prisoners, would cost more than the erection of twenty prisons fitted to contain the same number of individuals. But if the advantage of economy is inherent in vast constructions, on the other hand, that of a better discipline is inherent in establishments less considerable.

It is certain that a prison, in order to be well governed, ought not to contain too great a number of criminals; the personal safety of the officers and the order of the establishment are in continual danger in prisons, where two or three thousand malefactors are assembled: (as is the case in the bagnes.) It is the small number of the prisoners in Wethersfield which forms one of the greatest advantages of that penitentiary; there the superintendent and the chaplain are thoroughly acquainted with the moral state of each individual, and after having studied his evil, they endeavour to cure it. At Sing-Sing, where there are one thousand prisoners, a similar care is out of the question; and it is not even attempted. Supposing that the 32,000 prisoners of France were distributed in eighty-six departmental prisons, there would be on an average 400 in each of them. There are some departments, indeed, whose large and corrupted population furnishes many criminals, whilst others, whose inhabitants are less numerous and more honest, send few criminals to the prisons; but what would result from this fact? that those departments in which most crimes would be committed would be forced to build larger prisons, whilst the others would erect

smaller penitentiaries. Our departments would be in this respect precisely in the same position with the different states of the American Union.

The state of New York, which contains 2,000,000 of inhabitants, has two central prisons; of which one alone contains 1,000 prisoners. Connecticut, with but 260,000 inhabitants, possesses a single prison containing but 200 criminals. Few departments would have a prison so numerously filled as that of Sing-Sing, the principal defect of which consists in the great number of its inmates; and many departments, whose population is similar to that of Connecticut, would not have more criminals in their prisons than we find at Wethersfield; and we have a right to believe that this limitation of number would be an advantage, since Wethersfield, the smallest penitentiary in America, is also the best. And would not the example of this penitentiary, which, though less extensive, cost less in its construction than all the others, prove that we are enabled to compensate, by a spirit of economy and by local superintendence, for the greater expense occasioned by the construction on a small scale?

It is perceived with what reserve we have communicated these ideas. In order to proceed safely and steadily on a similar path, it would be necessary to possess information which we have not, and to be supported by documents which are not at our disposal.

Deprived as we are of this guidance, we do not present a system; we have only started a question, the solution of which is of vital interest to society, and to which we call the attention of all enlightened men.

Supposing the penitentiary system established and prospering in France, we cannot perhaps expect from it all the happy effects which it has produced in the United States.

Thus we doubt whether the labour of the prisoners would be as productive as it is in America, even allowing that the saving (*pécule*) of the convicts should be entirely suppressed. Indeed it is incontestable, that manufactured articles do not find with us the same market which is offered in the United States: and in order to estimate the revenue of a prison, it would be necessary to take into account articles which would remain unsold.

The penitentiary, which on this account would be less productive with us, would for a similar reason also be less efficient in respect to the reformation of the convicts. In America, where wages are extremely high, the convicts easily find labour when they leave the prison; and this circumstance favours their good conduct, when they have re-entered society: in France, the situation of delivered convicts is infinitely less favourable: and even if they are resolved to lead an honest life, they are not unfrequently brought back to crime by a fatal necessity. In the United States, the delivered convict generally leaves the state where his conviction is known; he changes his name and takes up his residence in another state, where he may begin a new life: with us, the convict, whose punishment has expired, meets everywhere with obstacles and embarrassments. The *surveillance* of the police, to which he is subject, obliges him to a fixed residence, which he cannot change, without committing a new offence against the laws: he is condemned to live in the place where his first crime is officially known; and every thing conspires to deprive him of the means necessary to his existence. The defect of a similar state of things is felt by all the world: and we doubt whether it will be long continued.

The surveillance of the “high police,” such as it is practised at present, is less useful to society than fatal to the delivered criminal. It would be of some advantage, if, by its influence, society, informed of the real situation of each released criminal,

had some means of procuring labour for those who have none, and assistance for those who stand in need of it. Might not government find this means in the foundation of agricultural colonies, similar to those which at present are so flourishing in Belgium and Holland? If such colonies were established in France on the yet uncultivated districts of our soil, no idler could complain of not finding labour; the beggars, vagrants, paupers, and all the delivered convicts, whose number, continually increasing, threatens incessantly the safety of individuals and even the tranquillity of the state, would find a place in the colony, where they would contribute by their labour to increase the wealth of the country.

Perhaps persons convicted for a short time, might also be sent there. There would be an incontestable advantage in introducing the greatest possible number of prisoners. One of the principal advantages of agricultural colonies, indeed, consists in not injuring the industry of citizens: they thus obviate one of the greatest dangers presented by the establishment of manufactories in prisons. The system of agricultural colonies deserves, therefore, a serious attention on the part of politicians; it seems that after having admitted its principle, it ought to be extended as much as possible; and that it would be easy to reconcile its application with the principles of the penitentiary system. Lastly, the establishment of agricultural colonies would have, among other advantages, that of deriving happy effects from that administrative superintendence, of which almost all the consequences are otherwise fatal; and it would thus cause one of the difficulties, obstructing the introduction of the penitentiary system, to disappear.

We have pointed out the difficulties which the penitentiary system would meet with in France, and have not disguised their importance. We do not deny that we see very great obstacles to the introduction of this system, such as it is in the United States, and surrounded by all the circumstances which accompany it in that country. We are, nevertheless, far from believing that nothing can be done towards the amelioration of our prisons.

We never have entertained the idea that France could attempt a sudden and general revolution in its prison system; to raze the old establishments, to erect new ones, and to sacrifice, for this single object, in one moment, enormous sums, which are urgently claimed by interests of another nature. But we can reasonably demand progressive reforms in the system of our prisons; and, if it is true, that it would be impossible to found in France a discipline supported by the assistance of the whip; if it is true, that with us the assistance of local influence is wanting to the success of the establishment, and the support of religion to the progress of moral reformation; it is also certain, that, though not adopting the American prison discipline without modification, we might borrow from it a number of its principles and its advantages. Thus every new prison which would be built according to the system of cells, would have an incontestable superiority over the present prisons. The separation of the prisoners during night, would put a stop to the most dangerous communications, and destroy one of the most active agents of corruption. We cannot imagine what objection, possibly, could be made against the system of cells, if, as we believe it to be the case, the prisons built according to this system, would not cost more than the others. We have said that it seems to us difficult to maintain absolute silence among the convicts without the assistance of corporal punishment. However, this is only an opinion, and the example of Wethersfield, where the prisoners have been governed without beating for several years, tends to prove that this severe means of discipline is not absolutely necessary. It seems to us, that the chance of success would make the trial on the part of government well worth the attempt — a trial which seems to us the more reasonable, as we would

be sure at least of approaching our end, in case we should not succeed entirely: thus even if public opinion should show itself decidedly hostile to corporal punishments, we would be obliged, in order to establish the law of silence, to resort to disciplinary chastisements of another nature, such as absolute solitude without labour, and a reduction of food; there is good ground to believe, that with the assistance of these latter punishments, less rigorous than the first, but nevertheless efficient, silence would be sufficiently maintained to avoid the evil of moral intercourse between the prisoners; the most important point would be, first to declare the principle of isolation and silence as a rule of discipline of the new prisons; the application of the principle would meet, perhaps with us, with more obstacles, because it would not be aided by such energetic auxiliaries; but we have no doubt, that regarding the great general end, much good would already thus be effected. Radical reformatory, perhaps, would not be obtained by this imperfect system, but great corruptions would be prevented, and we would thus derive from the American system, those advantages which are the most incontestable.

We believe that government would do something useful in establishing a model penitentiary, constructed upon the American plan, and governed as much as possible according to the disciplinary rules which are in force in the penitentiaries of the United States. It would be necessary that this construction, planned according to all the simplicity of the models we have brought with us, should be executed without any architectural elegance. Care should be taken to place in the penitentiary new convicts only; because if the nucleus of an old prison should suddenly be introduced into the new penitentiary, it would be difficult to submit to the severities of the new discipline, individuals accustomed to the indulgent system of our central houses.”

To recapitulate, we have signalled in the two first parts of this report, the advantages of the penitentiary system in the United States. The inflexible severity of a uniform system, the equality of punishments, the religious instruction and the labour substituted for the system of violence and idleness; the liberty of communication supplanted by isolation or silence; the reformation of the criminals instead of their corruption; in the place of jailors, honourable men who direct the penitentiaries; in the expenditure, economy, instead of disorder and bad management; these are the characteristics which we have acknowledged in the new American system.

The necessity of a reform in the prison discipline in France is urgent, and acknowledged by every one: the number of recommitted criminals regularly increasing, is a fact which strikes every thinking mind. The delivered convicts, who are but criminals still more corrupted for their having been confined in the prison, become, wherever they show themselves, just objects of fear. Incapable, as society thus is, to correct the guilty, will it resort to transportation? Let France look at England; let her judge whether it would be wise to imitate her in this respect. The defect is in our prisons, infected with a frightful corruption; but cannot this cancer, which every year increases, be healed? And do we not see prisons efficient for the reformation of the wicked, in a country whose prisons, but fifteen years ago, were worse than ours are now?

Let us not declare an evil incurable, which others have found means to eradicate; let us not condemn the system of prisons; let us labour to reform them.

To arrive at this end, the united efforts of many are necessary. And first, it is requisite that all writers, whose talent influences public opinion, should strive to give it a new direction, and to succeed so far, that the moral part of the discipline should be no more neglected than the amelioration of the administration of the physical part. It is necessary that the interests of reform should seize every mind, and become the

conviction of all. A controversy even, would be desirable between the organs of public opinion, in order to find out which are the disciplinary punishments that might be admitted without wounding public feeling, and which are incompatible with our civilization and our customs.

Lastly, it would be necessary that the government should put our legislation in harmony with the principles of the penitentiary system, and above all, that it invite the deliberation of the most enlightened men on these grave matters.

The future success of the penitentiary system, depends much upon the first step we take. It is important, therefore, that all possible precaution be taken to secure success to the first establishment which may be erected in France. It is particularly; necessary for the success of this establishment, that public attention should be turned towards it, should receive it favourably, and instead of throwing obstacles in its way, surround it with that moral assistance, without which no institution can prosper in a free country.

PART III.

On Houses of Refuge.



CHAPTER I.

Origin of Houses of Refuge in the United States. — Their organization. — Elements composing them. — The establishment has all the rights of a guardian over juvenile offenders. — The house of refuge is a medium between a prison and a school. — System of these establishments. — Houses of refuge at New York, Philadelphia, and Boston. — How the time of the children is divided between labour in the workshop, and the school. — Contract. — Disciplinary means. — Remarkable theory of a discipline established in the house of refuge in Boston. — Those of New York and Philadelphia less elevated, but preferable. — On what grounds liberty is restored to the children. — Effects of houses of refuge in respect to reformation.



GOVERNOR CLINTON, WHOSE name is for ever celebrated in the state of New York, said: "The houses of refuge are the best penitentiary establishments which have been conceived of by the genius of man, and instituted by his benevolence." With an examination of them we will finish our work, as we announced in the beginning.

The first house of refuge was established in the city of New York, in the year 1825; Boston followed in 1826, and Philadelphia in 1828; and there is good reason to believe that Baltimore will soon have a similar one. This offers an opportunity of judging of the power of association in the United States.

Touched by the shocking fate of young delinquents, who were indiscriminately confounded in the prisons with inveterate criminals, some individuals of New York sought a remedy for the evil; they united their efforts; laboured, first to enlighten public opinion, and then, setting themselves the example of generosity, soon found sufficient funds, by voluntary subscriptions, for the establishment of a house of refuge.

The houses of refuge, thus called into existence by the combination of individual charity, are, as is seen in their origin, private institutions; yet they have received the sanction of public authority. All the individuals whom they contain are legally in custody. But in approving of the houses of refuge, government does not interfere in their management and superintendence; of which it leaves all the care to the private individuals who founded them.

Every year the state grants some pecuniary assistance to these establishments, and yet it never takes the least part in their administration.

The supreme authority over the houses of refuge, resides in the entire body of the subscribers, who have contributed to their erection, or who continue their contributions for their support.

The subscribers elect the directors (managers,) on whom they confer the power of ruling the establishment in the manner which they judge the most advantageous. These managers appoint the officers, and make all the necessary regulations for the administration of the house. Some of them compose a permanent acting committee, charged with superintending the execution of the several resolutions: this composes the executive power of the institution. The officers of the house of refuge are the immediate agents of the acting committee, to whom they submit all their acts. They give no accounts to government, which does not demand any. Among the officers, the choice of the superintendent requires the chief care of the directors, because he is the soul of the whole administration.

Thus left to themselves, and subject to the control of public opinion alone, the houses of refuge prosper; the efforts, through the assistance of which they maintain themselves, are the more powerful as they are spontaneous and free. The expenses

which they cause are incurred without trouble or regret, because they are voluntary, and because the lowest subscriber has his share in the administration, and consequently, his interest in the success of the establishment. Though the expenses of construction and support are not paid by the state, they are not the less a charge upon society; but they weigh upon those who can best sustain them on account of their fortunes, and who find a moral indemnity in the sacrifice which they have had the merit of imposing upon themselves.

The houses of refuge are composed of two distinct elements: there are received, into them young people of both sexes under the age of twenty, condemned for crime; and also those who are sent there by way of precaution, not having incurred any condemnation or judgment.

Nobody contests the necessity of houses of refuge for young convicts. In all ages and in all countries, the disadvantage has been acknowledged which results from placing in the same room, and submitting to the same discipline, the young delinquents and the guilty offenders whom age has hardened in crime: the prisoner, yet of tender age, has often committed but a slight offence: how can we justly make him the associate in prison of another, who is doomed to expiate heavy crimes? This defect is so serious, that magistrates hesitate to pursue young delinquents, and the jury to condemn them. But there another danger presents itself. Encouraged by impunity, they give themselves up to new disorders, which a punishment proportionate to their offence would perhaps have prevented them from committing.

The house of refuge, the discipline of which is neither too severe for youth, nor too mild for the guilty, has therefore for its object both the withdrawal of the young delinquent from a too rigorous punishment and from the dangers of impunity.

The individuals, who are sent to the houses of refuge without having been convicted of some offence, are boys and girls who are in a position dangerous to society and to themselves: orphans, who have been led by misery to vagrancy; children, abandoned by their parents and who lead a disordered life; all those, in one word, who, by their own fault or that of their parents, have fallen into a state so bordering on crime, that they would become infallibly guilty were they to retain their liberty.

It has, therefore, been thought that the houses of refuge should contain at once juvenile criminals and those on the point of becoming such; the latter are spared the disgrace of judgment, and all protected against the pollution of the prison. And that no disgrace should be attached to confinement in the house of refuge, a name has been given to this establishment, which reminds us of misfortune only. The house of refuge, though containing a certain number of convicted youths, is nevertheless no prison. He who is detained in it undergoes no punishment: and in general the decision by which the children are sent to the refuge, has neither the solemnity nor the forms of a judgment. And it is here that we will mention a fact which seems to us characteristic of this institution. The magistrates who send the children to the refuge, never determine what length of time the delinquent must remain there; they merely send them to the house, which from that moment acquires all the rights of a guardian. This right of guardianship expires when the lad arrives at his twentieth year; but even before he has attained this age, the managers of this establishment have the right to restore him to liberty if his interest require it.

The house of refuge is a medium between a school and a prison; the young delinquents are received much less for punishment than to receive that education which their parents or their ill fate refused them; the magistrates, therefore, cannot fix the duration of their residence in the house of refuge, because they cannot foresee

how much time will be necessary to correct the children, and to reform their vicious dispositions.

The office of judging whether a child is fit to leave the refuge, is left to the managers of the establishment, who see every day the children confided to their superintendence, judge of their progress, and designate those to whom liberty may be restored without danger: but then even when a child leaves the house of refuge in consequence of good conduct, he does not cease to be under the supervision of the managers during minority; and if he does not realize the hopes which had been entertained, the latter have the right to call him back to the house of refuge, and may employ the most rigorous means in order to effect it.

Some objections have been made in Pennsylvania against the right granted to the houses of refuge to receive individuals who had neither committed a crime nor incurred a conviction. Such a power, it was said, is contrary to the Constitution of the United States: it was added, that the power of the managers to shorten or prolong, at their pleasure, the duration of detention, is arbitrary, and cannot be tolerated in a free society. It would have been difficult to refute theoretically these objections; but the public saw that the houses of refuge alleviated the fate of juvenile criminals, instead of aggravating it, and that the children brought into it without being convicted, were not the victims of persecution, but merely deprived of a fatal liberty.

Nobody raises at present his voice against the houses of refuge. Yet we see with how much reserve the functions of those must be exercised, who have the power of sending children thither; if we consider that they have the right to withdraw a child from its parents in order to place it in the establishment, and that they must exercise this authority every time that the parents have to reproach themselves with the disorderly conduct of their child. The law has foreseen the possibility of abuse, and has endeavoured to provide a remedy: the child has, according to the law, the right of protection by the ordinary judge against the decision of the functionary who sends it to the refuge. The parents have the same right: and it is not unfrequently exercised.

For the rest, it is not persecution or tyranny which are to be dreaded in these establishments. However necessary it may be that a house of refuge should not present the severity and the discipline of a prison, it would be equally dangerous if it had the too indulgent and too intellectual discipline of a school. But if these establishments in America should deviate from their true end, it would be less from inclining too much to severity than leaning improperly to mildness.

The fundamental principles upon which the houses of refuge rest, are simple; in New York and Philadelphia, the children are separated during night in solitary cells; during the day they may communicate with each other. The separation during night seems to be indispensably necessary from a regard to good morals; it may be dispensed with during day; absolute isolation would be intolerable to children, and silence could not be maintained among them without punishments, the violence of which alone must make us repugnant to them. There would be, besides, the greatest disadvantages in depriving them of social relations, without which their intellectual progress would be checked.

In Boston they are separated neither night nor day. We have not remarked that in this house of refuge any disadvantage results from their sleeping together; but their danger is, in our opinion, not the less, and it is avoided in Boston only by a zeal and vigilance altogether extraordinary, which it would be a mistake to expect, in general, even from persons the most devoted to their duties.

The time of the children is divided between the instruction which they receive, and the various labours which they have to learn and to perform: they are taught that

elementary knowledge which will be useful to them in the course of their lives, and a mechanical art, which, at some future period, may furnish them the means of subsistence. Their intellectual occupations give to the establishment the aspect of a primary school, and their manual labour in the workshop is the same with that in the prison. These two different traits are the characteristics of a house of refuge.

Their patrons do not limit themselves to a development of the minds of the children, and the skill of their hands; an effort is made above all to cultivate their hearts, and to inculcate the principles of religion and morals. Mr. Hart, superintendent of the house of refuge in New York, often told us, that he should consider any success attendant on his efforts altogether impossible without the aid of religion.

When a young delinquent arrives at the house of refuge, the superintendent acquaints him with the regulations of the establishment, and gives him, for the guidance of his conduct, two rules, remarkable for their simplicity: 1. never lie; 2. do the best you can. The superintendent inscribes his name in the great register of conduct. This register is destined to contain all the information relative to the children. It states, as accurately as possible, their previous life, their conduct during their stay in the house, and after they have left the establishment. The child is then placed in the class proper for its age, and its known morality. Mr. Hart, of New York, defines the first class as that composed of the children who never swear, never lie, never make use of obscene or indecorous expressions, and who are equally zealous in the school and in the workshop. According to Mr. Wells, of Boston, this same class is composed of those who make positive, regular, and constant efforts towards being good.

In Boston, the admission of a child into the house of refuge is accompanied by circumstances which have appeared to us worthy of being reported: the establishment forms a small society, upon the model of society at large. In order to be received in it, it is not only necessary to know its laws, and to submit to them freely, but also to be received as a member of the society by all those who compose it already. The reception takes place after the individual in question has gone through the fixed period of trial, if the candidate is not rejected by a majority of the votes of the little members composing this interesting society.

In every house of refuge the inmates are divided into good and bad classes. Their conduct makes the children pass from one into the other. The good classes enjoy privileges which the bad ones are denied; and the latter are subject to privations which the former have not to undergo.

Eight hours, at the least, are assigned every day to labour in the workshops, where the children are occupied with useful arts, such as shoe-making, joiner's work, cloth-making, carpenter's work, &c. Four hours daily are spent in the school. After rising, and before going to bed, prayers are offered. Three meals take half an hour each; in short, there are about fifteen hours of the day occupied with study, labour, &c., and nine hours with rest. Such is, with little difference, the order established in New York and Philadelphia. This order is the same every day, and only varies according to the change of the seasons, which has an influence upon the hour of rising and retiring. The house of refuge in Boston differs from the above mentioned; the intellectual part of education occupies here a more prominent place. Only five hours and a half are daily occupied by labour in the work-shops; four hours are passed in the school, more than one hour, is spent in religious instruction, and all the children have two hours and a quarter every day for recreation. These hours of recreation are not the least profitable ones to the children. Mr. Wells, the superintendent of the Boston house of refuge, takes part in their games, and whilst their bodies are developed by gymnastic

exercises, their moral character forms itself under the influence of a superior man, who, we may say, becomes a child with them, and whose authority is never greater than at the moment when he does not make them feel it.

The children learn in the school, reading, writing, and arithmetic; they also receive some instruction in history and geography. The Lancasterian method of mutual instruction has been adopted in all of them. The children in general show great facility in learning. It has been often remarked in America, that the houses of refuge are composed of a class of children more intelligent than others; the nature of these establishments itself explains this fact: in general, children abandoned by their families, or who have escaped from their homes, and for this reason have been early reduced to their own resources, and constrained to find within themselves the means of subsistence, are received here. It is therefore not surprising that they should make rapid progress in their learning. Most of them have, moreover, a restless, adventurous mind, anxious for knowledge. This disposition, which first led them to ruin, becomes now, in the school, a powerful cause of success. No useful books which they desire for their information are withheld from them. In Philadelphia, there are in the library of the establishment more than fifteen hundred volumes, which are all for the use of the children.

The hours of labour are fixed invariably for all, and none are absolved from them. Nevertheless, a task is given, after the performance of which, the young inmate of the house of refuge, who is more active than the others, may amuse himself.

The superintendence of the children in the school and workshops, does not cease in the hours of leisure. They play freely with each other; but gambling of whatever kind is strictly prohibited.

All things in their discipline are favourable to health. Every day they are obliged to wash their feet and hands. They are always dressed cleanly; and their food, though coarse, is abundant and healthy. None are allowed to eat any thing but what is prescribed by the ordinary discipline; water is the only beverage. There is no shop in which the children may obtain food or drink, and great pains are taken that they do not procure it by Communications with persons out of the establishment.

Food, clothing, and bedding, are furnished by the administration. The labour of the children alone is let out by contract; and the restrictions which abound in the contract are such, that the contractor can have no kind of influence in the establishment.

In New York and Philadelphia, eight hours a day are given to the contractor; in Boston, five hours and a half only. The contractor, or his agents, come into the establishment to teach the various arts. For the rest, they are not allowed to have any conversation with the children, nor can they retain them a minute longer than the fixed time. It will be easily understood, that, with such conditions, it is not possible to stipulate advantageously in a pecuniary respect with the contractors: but the children are not made to work in order to yield profit; the only object in view is to give them habits of industry, and to teach them a useful trade.

It is therefore not surprising that the support of the houses of refuge costs more than other penitentiary establishments. On the one hand, the young inmates are better fed and clothed than convicts, and a greater expense is incurred for their instruction; and, on the other, their labour does not yield as much as that of criminals who are sent for a long time into the prisons. So also, as we shall soon see, the young pupil of the house of refuge leaves the establishment as soon as he can be placed anywhere else with advantage. Liberty is restored to him when he knows a trade; that is to say, at the moment when his labour would become productive to the establishment.

The administration of the American houses of refuge is almost entirely *en régie*; that is, it manages its own supplies without contract; it is justly believed that the system of contract, applied to all the branches of administration, would be irreconcilable with the moral management which the nature of the establishment requires.

Though, on the whole, the subsistence of the young prisoners is expensive, every thing seems to be calculated to avoid unnecessary expense. The houses of refuge contain both boys and girls, who, though under the same roof, are perfectly separated from each other. But this circumstance permits some labour to be done by the girls, which, if it were performed by others, would be a charge to the house. Thus they do the washing, mend the clothes, and make the greater part of their own dresses, and those worn by the boys; they also do all business in the kitchen for the whole house; thus they are employed in a way useful for themselves, and for the house, whilst it would be difficult to give them any other productive work.

This order of things is established and maintained by disciplinary means, which we ought to examine. Two principal means are employed: punishments and rewards; but we must make a distinction upon this point, between the houses of refuge of New York and Philadelphia, and that of Boston.

In the two first establishments, the punishments inflicted for disobeying the discipline, are:

1. Privation of recreation; 2. Solitary confinement in a cell; 3. Reduction of food to bread and water; 4. In important cases, corporal punishment — that is to say, stripes.

In New York, the house is expressly authorized to apply stripes. In Philadelphia, the regulations do not permit them expressly, but merely do not prohibit them. The distribution of punishments belongs to the superintendent, who has a discretionary power in the establishment.

Whilst the refractory children are subjected to these various punishments, according to the character of their offence, distinctions of honour are accorded to the children whose conduct is good. Besides the honour of belonging to the first class, those who distinguish themselves in this, wear badges of honour; lastly, the superintendent designates among the best, a certain number of monitors, to whom he confides part of the *surveillance* with which he is charged himself: and this testimony of confidence is for those whom he has chosen — a distinction to which they attach great value.

In Boston, corporal chastisements are excluded from the house of refuge; the discipline of this establishment is entirely of a moral character, and rests on principles which belong to the highest philosophy.

Every thing there tends to elevate the soul of the young prisoners, and to render them jealous of their own esteem and that of their comrades: to arrive at this end, they are treated as if they were men and members of a free society.

We treat of this theory with reference to discipline, because it has appeared to us, that the high opinion instilled into the child, of his own morality and social condition, is not only fit to effect his reformation, but also, the best means to obtain from him entire submission.

First, it is a principle well established in the house, that nobody can be punished for a fault, not provided for, either by the divine law, or those of the country or the establishment. Thus the first principle in criminal matters, is also established in the house of refuge. The regulations contain the following principle: “As man is not capable of punishing disrespect or irreverence to God; therefore, if a boy be irregular

in his behaviour at religious services, he shall not be allowed to attend them — leaving the punishment with a higher power, and for a future day.”

In the house of refuge in Boston, the child, withdrawn from religious service, incurs, in the opinion of his comrades and of himself, the severest of all punishments.

In another place it is expressed, that the children shall not be required to denounce the offences of their comrades; and in the article which follows, it is added, that nobody should be punished for a fault sincerely avowed. We know in France, public establishments, in which this denunciation is encouraged, and where it is practised by the better subjects of the house.

A book of conduct exists, likewise, in Boston, where every one has his account of good and bad marks; but that which distinguishes this register from those of other houses of refuge is, that in Boston, each child gives his own mark. Every evening the young inmates are successively asked; every one is called upon to judge his own conduct during the day; and it is upon his declaration that the mark, indicating his conduct, is inscribed. Experience has shown that the children always judge themselves more severely than they would have been judged by others; and not unfrequently it is found necessary, to correct the severity and even the injustice of their own sentence.

If any difficulty arises in the classification of morality, or whenever an offence against the discipline has been committed, a judgment takes place. Twelve little jurymen, taken from among the children of the establishment, pronounce the condemnation or the acquittal of the accused.

Each time that it becomes necessary to elect among them an officer or monitor, the little community meets, proceeds to the election, and the candidate having most votes is proclaimed president. Nothing is more grave than the manner in which these electors and jurymen of tender years discharge their functions.

The reader will pardon us for having dwelt so long on this system; and for having pointed out its minutest details. We need not say that we do not consider this an infant republic in good earnest. But we believed ourselves obliged to analyze a system so remarkable for its originality. There is, however, more depth in these political plays, which agree so well with the institutions of the country, than we would suppose at first glance. The impressions of childhood and the early use of liberty, contribute, perhaps, at a later period, to make the young delinquents more obedient to the laws. And without considering this possible political result, it is certain, that such a system is powerful as a means of moral education.

In fact, it is easy to conceive the elasticity of which the youthful mind is capable, when all the sentiments proper to elevate it above itself are called into action.

The discipline is, however, fitted still more for those cases where the moral means which we have just indicated, prove insufficient.

Children, whose conduct is correct, enjoy great privileges.

They alone participate in the elections, and are alone eligible; the vote of those who belong to the first class, counts for two — a kind of double vote, of which the others cannot be jealous, because it depends upon themselves alone to obtain the same privilege. With the good are deposited the most important keys of the house; they go out freely, and have the right to leave their place, when the children are assembled, without needing a peculiar permission; they are believed on their word, on all occasions; and their birth day is celebrated. All the good do not enjoy these privileges, but whoever belongs to a good class, has a right to some of these prerogatives. The punishments, to which the bad children are subject, are the following:

Privation of the electoral right, and the right of being elected; they are not allowed to come into the room of the superintendent, nor to speak to him without permission, nor are they allowed to converse with their comrades; lastly, if it should be required, a physical punishment is applied. Sometimes "bracelets" are put on; sometimes, the offender is blindfolded; or he is shut up in a solitary cell. Such is the system of the house of refuge in Boston.

That of the establishments of New York and Philadelphia, though infinitely less remarkable, is perhaps better: not that the Boston house of refuge does not appear to be admirably conducted, and superior to both the others; but its success seems to us less the effect of the system itself, than that of the distinguished man who puts it into practice.

We have already said that the great defect of this house of refuge is, that the children sleep together: the system, moreover, which is established there, rests upon an elevated theory, which could not be always perfectly understood; and its being put into practice would cause great difficulties, if the superintendent should not find immense resources in his own mind to triumph over them.

In New York and Philadelphia, on the contrary, the theory is simple. The isolation during night, the classification during day, the labour, the instruction — every thing, in such an order of things, is easily understood. It neither requires a profound genius to invent such a system, nor a continual effort to maintain it. To sum up the whole, the Boston discipline belongs to a species of ideas much more elevated than that established in New York and Philadelphia; but it is difficult in practice.

The system of these last establishments, founded upon a theory much more simple, has the merit of being within reach of all the world. It is possible to find superintendents who are fit for the Philadelphia system: but we cannot hope to meet often with such men as Mr. Wells.

In spite of the well-marked difference between the two systems, of which one can be practised only by superior men, whilst the other is on the level of ordinary minds, we must acknowledge that, both in the one and the other case, the success of the houses of refuge essentially depends upon the superintendent. It is he who puts the principles upon which the system acts into action; and he must, in order to arrive at a happy result, unite in his person a great number of qualities, the union of which is as necessary as rare.

If a model of a superintendent of a house of refuge were required, a better one, perhaps, it would be impossible to find, than that which is presented by Mr. Wells, and Mr. Hart. A constant zeal, an indefatigable vigilance, are their lesser qualities; to minds of great capacity, they join an equanimity of character, the firmness of which does not exclude mildness. They believe in the religious principles which they teach; and have confidence in their own efforts. Endowed with deep sensibility, they obtain still more from the children, by touching their hearts, than by addressing their understandings. Finally, they consider each young delinquent as their child; it is not a profession which they perform: it is a duty they are happy to fulfil.

We have seen how the youth enters the house of refuge, and what discipline he is subjected to.

Let us at present examine by what means he may obtain the restoration of liberty, and let us follow him into the society which he re-enters.

The principle above laid down, that the inmate of a house of refuge does not undergo a punishment, finds here, again, its application. As he has been sent to the house for his own interest only, he is allowed to leave it as soon as his interest requires it.

Therefore, as soon as he has learnt a trade, if, during one or several years, he has acquired moral and industrious habits, he is believed to be capable of becoming a useful member of society. Yet absolute and complete liberty is not restored to him; because, what would become of him in the world, alone, without support, unknown by any body? — He would find himself precisely in the same situation in which he was, before he entered the house. This great danger is avoided: the superintendent waits for a good opportunity to bind him out as apprentice with some mechanic, or to place him as a servant in some respectable family; he avoids sending him into a city, where he would relapse into his bad habits, and find again the companions of his disorderly life; and every time an opportunity offers, employment for him, with farmers, is preferred. At the moment he leaves the establishment, a writing is given to him, which, in kind words, contains advice for his future conduct; the present of a Bible is added.

In general, it has been found inconvenient to restore liberty to these juvenile-offenders, before they have been in the house at least one year, in order to acquire habits of order.

Leaving the house of refuge, he does not cease to belong to the establishment, which, binding him out as an apprentice, reserves all the rights of a guardian over him; if he leave the master with whom he has been placed, he is, according to the law, brought back to the house of refuge, where he must again remain until he has given a new proof that shows him worthy of liberty. In fine, he may be successively brought back to the establishment, and restored to liberty, as often as the managers think it necessary; and their power, in this respect, does not cease, until the individual in question has arrived at the age of eighteen, if a female; and of twenty, if a boy.

During his apprenticeship, the child is the object of continued attention, by the house of refuge. The superintendent corresponds with him, and endeavours to keep him in the path of virtue by his advice; and the youth writes on his part to the superintendent, and more than once the latter has received letters from young delinquents, full of touching expressions of gratitude.

Now, what results have been obtained? Is the system of these establishments conducive to reform? and are we able to support the theory by statistical numbers?

If we consider merely the system itself, it seems difficult not to allow its efficiency. If it be possible to obtain moral reformation for any human being, it seems that we ought to expect it for these youths, whose misfortune was caused less by crime, than by inexperience, and in whom all the generous passions of youth may be excited. With a criminal, whose conniption is inveterate, and deeply rooted, the feeling of honesty is not awakened, because the sentiment is extinct; with a youth, this feeling exists, though it has not yet been called into action. It seems to us, therefore, that a system which corrects evil dispositions, and inculcates correct principles, which gives a protector and a profession to him who has none, habits of order and labour to the vagrant and beggar whom idleness had corrupted; elementary instruction and religious principles to the child whose education had been neglected; it seems to us, we say, that a similar system must be fertile of beneficial effects.

There are, however, cases in which it is almost impossible to obtain the reformation of juvenile offenders; thus experience has taught the superintendents, that the reformation of girls, who have contracted bad morals, is a chimera which it is useless to pursue. As to boys, the most difficult to be corrected are those who have contracted habits of theft and intemperance; their regeneration, however, is not so desperate a task as that of girls who have been seduced, or have become prostitutes.

It is also generally thought in the United States, that it is necessary to avoid receiving, in the house of refuge, boys above six teen, and girls over fourteen years; after this age, their reformation is rarely obtained by the discipline of these establishments, which is less fit for them than the austere discipline of the prisons.

In Philadelphia, it is believed, that more than half of the children who have left the refuge, have conducted themselves well.

Being desirous of ascertaining ourselves the effects produced by the house of refuge in New York, we made a complete analysis of the great register of conduct, and examining separately the page of each child, who had left the refuge, investigated what was its conduct since its return into society.

Of four hundred and twenty-seven male juvenile offenders, sent back into society, eighty-five have conducted themselves well, and the conduct of forty-one has been excellent. Of thirty-four, the information received is bad; and, of twenty-four, very bad. Of thirty-seven among them, the information is doubtful; of twenty-four, rather good than otherwise; and of fourteen, rather bad than good.

Of eighty-six girls who have returned into society from the house of refuge, thirty-seven have conducted themselves well, eleven in an excellent manner, twenty-two bad, and sixteen very bad. The information concerning ten is doubtful; three seem to have conducted themselves rather well, and three rather bad than otherwise.

Thus of five hundred and thirteen children who have returned from the house of refuge of New York into society, more than two hundred have been saved from infallible ruin, and have changed a life of disorder and crime for one of honesty and order.

CHAPTER II.

Application of the system of houses of refuge to our "houses of correction." — State of our penal legislation in relation to children under sixteen years, and detained for crimes and offences, or by way of precaution. — They corrupt each other in the prisons. — Modifications to be made in the penal legislation and in the discipline of the houses of correction.



IF FRANCE SHOULD borrow from the American houses of refuge some principles on which these establishments are erected, she would remedy one of the chief vices of her prisons.

According to our laws, the criminals, under the age of sixteen, are not to be confounded with convicts of maturer years; and the law gives the name of house of correction to the place where they are detained. Yet, with very rare exceptions, the young delinquents and the old criminals are placed together in our prisons. Nay more: it is well known that the child not yet sixteen years old, who has been acquitted on account of want of judgment, is nevertheless, according to circumstances, rendered to its parents, or conducted into a house of correction, in order to be *educated and detained (elevé et détenu)* during such a number of years as the judgment of the court shall determine, and which never exceeds the period of his arrival at his twentieth year.

Thus, if a child, accused of a crime, is acquitted, the courts have the right to send it back to its parents, or into a "house of correction." This alternative makes it easy to comprehend the intention of the law. The parents receive it, if they show a guaranty of morality, and the child is restored to them, that they may correct its evil dispositions and reform its bad habits. On the contrary, if the judges have good reason to believe, that the faults of the child are owing to the fatal example of its own family, they will take care not to restore the child to it, where it would only accomplish its corruption; and they, therefore, send it into a house of correction, which will be less a prison than a school; it will be *educated and detained*, says the law. Now, we ask, is the intention of the legislature fulfilled? and do the young prisoners receive the education which it was the intention of the law to procure for the unfortunate child?

It can be said that, in general, the prisons, in which with us the juvenile offenders are detained, are but schools of crime; so that all the judges who know the corrupting discipline of these prisons, are averse to condemn an arrested youth, whatever may be the evidence of his offence; they rather acquit him and restore him to liberty than contribute on their part further to corrupt him, by sending him into one of the prisons; but this indulgence, the motive of which is so easily understood, is not the less fatal to the guilty, who find in this impunity an encouragement to crime.

There is also a right sanctioned by our civil laws, and the operation of which is in some sort suspended by the defect of our prisons: we mean the power which belongs to the parents of causing those of their children, who are minors and whose conduct is reprehensible, to be detained in a prison.

What parents would use their authority, if they knew into what a den of corruption their children would be thrown?

There is then in this respect a void in the system of our prisons which it is important to fill. This would be obtained by establishing houses of refuge or correction founded upon the principles of those of which we have given a picture.

It would certainly be difficult to adopt entirely the American system: thus, the power given in the United States to all officers of the police to send children, whose conduct is suspicious, into the house of refuge, though no specific offence be imputed to them; and the extraordinary right which they have even of taking a child from his parents if they do not take sufficient care of its education, would not all this be contrary to our customs and laws? [In order to understand our authors, the reader must remember what an immense difference exists between a French police officer, the member of a powerful and independent body, extending with its million arms over the whole country, and an American police officer, a harmless and comparatively powerless single individual, under the constant *surveillance* of public opinion, which in a country where public life is so public, is a police unequalled in watchfulness by that of any body of paid officers. Every thing depends in such matters upon circumstances. An officer in the United States never ceases to be and to *feel* as a citizen; he is in this respect essentially different from a government officer on the continent of Europe. We may add further the remark we before made, as to the supervisory power of the judiciary — and also, that in Pennsylvania, at least, (we are not so well informed in regard to the other states,) the power by no means exists to the extent stated by the authors. The authority to commit to the refuge is confined to courts, magistrates, and guardians of the poor, and is not granted to police officers — and is limited too to the cases of crimes or offences committed by children. See what we have said on this point in a previous note. — TRANS.]

But the discipline of the American houses of refuge would have great advantages in France if only applied to young convicts, or to those who, without being declared guilty, are to be detained during a fixed time in consequence of a positive judgment.

If our houses of correction, the viciousness of which frightens the courts, should undergo a reform, the magistrates would send there without repugnance a number of young delinquents, vagrants, beggars, &c., who abound in all our cities, and whom an idle life leads infallibly to crime. This reform might be effected by building, in the houses of correction, solitary cells, which would prevent communication during night, and by the adoption of a system of instruction and labour, analogous to that which is practised in New York and Philadelphia.

It would be necessary, however, to make an important change in our legislation, in order to insure success to the houses of correction in France.

The greater part of the happy results crowning the endeavours of the American houses of refuge, are principally owing to the discretionary power with which the managers of these establishments are invested, to retain or return to society according to their pleasure, the children of whom they have received the guardianship; they use this right for the interest of the young delinquent, for whom they endeavour to find an advantageous place, as an apprentice; and each time that a favourable opportunity offers itself, they can avail themselves of it, because they have unlimited authority over the children sent to the refuge.

According to our laws, the director of a house of correction could do nothing like it; he would be obliged, in order to restore liberty to a young delinquent, to wait for the expiration of the period fixed by the judgment. What would be the consequence? that, on leaving the house of correction, the child would find itself as embarrassed respecting its fate as previously to its being sent to the refuge: it would be full of good resolutions and principles, but incapable of putting them into practice.

It seems to us that a single modification of article sixty-sixth of the penal code, would greatly remedy this inconvenience.

The young delinquents, under the age of sixteen years, are of two kinds: those who, having acted with discretion, are declared guilty and convicted, and those who, having acted without discretion, have been acquitted but are detained for the sake of their education. Respecting the first, their fate is positively settled by the judgment and ought to be so; they have committed a crime, they must suffer the punishment. One is but a corollary to the other. This punishment and its duration can be pronounced only by the courts; if it is fixed, it must be suffered to its whole extent, according to the terms of the judgment: in this case, the special interest of the child is of little importance; it is not only for the purpose of correction, that it is imprisoned: it is particularly for the interest of society and the sake of example that the punishment is inflicted.

But the child acquitted in consideration of its want of discretion, stands in a different position: it is detained in a house of correction, not in order to secure its person, but because it is thought that it will be in a better place than in its own family; a good education is afforded, which it would not find elsewhere; it is looked upon as unfortunate only, and society takes upon itself to give that which fortune has denied. It is not for public vengeance, but for its personal interest, that it is placed in the house of correction: as it has committed no crime, no punishment is to be inflicted upon it.

In respect to the young prisoners who are in this position, it seems to us that the duration of their stay in the house of correction ought not to be fixed by the courts. We appreciate the position, that the judicial authority alone ought to retain the power of sending them there, according to the circumstances, of which it has the opportunity of judging; but why should they be burthened at the same time with determining the number of years during which the education of a child may be completed? As if it were possible to foresee, in each case, the time which may be requisite for the correction of the vices, and the reformation of the evil inclinations of a child!

Would it not be more judicious to invest the inspectors and directors of the house with the guardianship over children whose education is confided to them, and with all the rights which appertain to the guardianship?

If it were so, the directors of the establishment would study the dispositions of the children placed under their authority; they would be able to seize with much more advantage upon the favourable moment to restore them to liberty; the time during which a child would have to remain in the house of correction, would thus be determined in a much more judicious way. And if a good opportunity should offer itself for one among them to be indentured as an apprentice, or in any other way, the directors would make use of it.

Even if all the advantages should not result from this change which it promises, something would already be gained, by effacing from our laws the provision in question. This provision is in fact the source of the worst abuses: it will surprise us little if we consider that the law confers a power upon the courts, without furnishing, at the same time, a rule for its exercise. Thus it empowers the court to send to the house of correction, for a certain number of years, (at its discretion,) children acquitted in consideration of want of judgment; but upon what principle do they adjudge the number of years which the child has to stay in the house of correction? The law is silent on this point: the courts themselves are ignorant respecting it. If a court pronounce a punishment, it is measured by the offence; but by what standard shall the stay in the house of refuge be measured by anticipation, if the education of a child is in question, whose intellectual state is unknown to the judges, and of whose future progress they can know nothing?

This impossibility of finding a basis for the sentence, produces a completely arbitrary execution of the law. The judges will condemn a child to be detained until his fifteenth or twentieth year, without having the least standard to go by: this badly defined authority causes often the most revolting decisions.

A child of a less age than sixteen appears before a court. The first question is as to its capacity: if it is adjudged to have acted with discretion, it is sentenced to be detained in the house of correction; as this is a punishment pronounced by the court, it is proportionate to the offence, which appears not very grave, considering the youth of the convicted prisoner. It will, therefore, receive a sentence of some months imprisonment only.

Let us suppose another youth of the same age indicted; his offence is light, and the court finds he has acted without sufficient discretion. This youth will be sent for several years to the house of correction, to be *educated and detained* indeed, but, in fact, to be locked up in the same prison with the first, with this difference only, that he remains there a long time, whilst the former, who has been declared guilty, passes but a short time in the same place.

Thus it may be justly said, that for offenders under sixteen years, it is better to be found guilty than to be acquitted. Whoever has any experience in the administration of criminal justice, will acknowledge the defect which we point out; it is a defect not to be imputed to the magistrate, but belongs altogether to the law and its operation. This evil would be remedied in a great degree, in all cases in which children are detained without being convicted, if the courts would merely decree their detention in the house of correction, without fixing irrevocably the period of detention; by the sentence, the directors of the house would be authorized to retain the child for a fixed period; but it would be lawful for them to restore him to liberty before the expiration of the term, if circumstances permitted. They would not retain the child longer than the fixed period, but they would be at liberty to retain him for a shorter period.

It seems, therefore, to us, that a great advantage would result from a change of the provision of the law in question. The houses of correction would then become, in the true meaning of the word, houses of refuge, and they would be able to exercise upon the mind of the young delinquent a salutary influence, which, in the actual state of our legislation, is unattainable. We only indicate here the principal changes which would be requisite to arrive at this end: many questions connected with this subject, ought to be discussed and investigated, if a reform is to be produced fertile of happy results. Thus it would first be necessary to examine which would be the best means of interesting public opinion in the success of this reform; to determine the elements which shall compose the houses of refuge; to fix the principles of their organization, and to discuss the question, "where and in what number ought they to be established?" &c. All these questions, and many others which we pass over in silence, must be submitted to the investigation of men enlightened and versed in the knowledge of our laws, our customs, and the actual state of our prisons.

If this discipline should be introduced among us, pains ought to be taken to remove every thing which is of a nature to impede its success in this country.

We have already spoken of the danger, which is the most difficult to be avoided in this matter, viz., the difficulty of keeping a house of refuge in the proper medium between a school and a prison. In the United States, the houses of refuge approach, perhaps, too much to the former, and this defect may become fatal to them, when children, instigated by their parents themselves, may wish to find advantages denied them in their family. It ought, therefore, to be kept in mind, that these establishments, to fulfil their true object, must preserve, though differing from a prison, part of its

severity, and that the comfort as well as the moral instruction which the children are sure to find in the house of refuge, ought not to be such as to make their fate enviable by children whose life is irreproachable.

We may, on this occasion, remind our readers of a truth which cannot be neglected without danger, viz., that the abuse of philanthropic institutions is as fatal to society as the evil itself which they are intended to cure.

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