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CONSIDERATIONS

RESPECTING

The Policy of some Recent Legislation
in Pennsylvania.

1861

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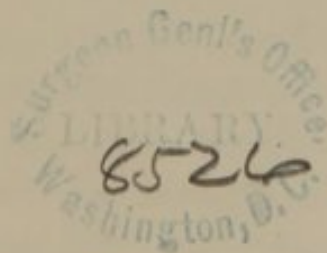
BY

WILLIAM PARKER FOULKE,

OF PHILADELPHIA.

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1861.



CONSIDERATIONS

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Policy of some Recent Legislation in Pennsylvania.*

THE history of reforms of penal discipline resembles in many respects that of other attempts to remedy great social mischiefs. At first we have the disclosure of the main evil, to which the public eye and mind had become habituated, and the real magnitude nature and causes of which were therefore slowly appreciated by the community at large. Then come the earnest efforts of a few well instructed and zealous reformers, whose laborious task it is to obtain the authority and means requisite for proposed changes. They define the mischief, trace its causes, indicate the departures to be made from the old routine, and invent the machinery of the remedy which the government is to sanction, establish and conduct. During the first stage of such an undertaking, all minds are occupied with fundamental considerations; and it is only after the experiment has made progress through some steps of trial, that its details receive the special scrutiny which is indispensable to complete success.

When the controlling idea has been firmly adopted in different localities, it is speedily discovered that peculiarities of political and social condition modify the agencies in use. Difficulties existing in one country are unknown in another. The influence of old laws is not the same everywhere. National character, religion, financial facilities or restrictions, may

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greatly qualify the practical application of well conceived designs which in the abstract are everywhere approved. It is true, therefore, that even supposing a general conformity of main purpose, there will be found diversity of means of execution.

Every person acquainted with the history of prison discipline knows that, at the outset of the efforts to improve it in the United States, the principal thought of all parties was, that indiscriminate and unrestrained association of prisoners with one another was the most prominent and fertile source of the evils of the old prisons, and that the breaking up of this association was the end to be primarily sought. One party endeavoured to attain this end by classifying the untried and the convicted, and subjecting the latter to silence and joint labour. Another party adopted the method of individual separation. Many years elapsed during which the rivalry between these two modes employed a large proportion of the attention of their respective friends, in the investigation of the various topics of comparison which were developed by the controversy which was maintained. There was, too, a large work to be accomplished in relation to those institutions which were nearly connected with the penitentiary system. Houses of Refuge, and similar establishments for the young, and county prisons, or places of arrest and detention of persons untried and debtors, were to be founded or remodelled; and the relations of the entire administration of penal justice to the criminal code itself, were to be reviewed and redigested.

As the results of experience accumulated, it became evident that the method of association would not suffice for the segregation of prisoners, under the rule of silence, however sternly enforced; and it began to be assumed in some quarters that, to a certain extent, the companionship of convicts is not only essential to health of mind and body as had been previously alleged, but is even an indispensable means of reformation, or at least of preparation for the temptations and the duties of free society.

On the other hand, the friends of separation, appealing to

the statistics of prisons in the United States and in Europe, maintained that the returns of health and of mortality were conclusive evidence in favour of the safety of cellular confinement, and that the returns of reconviction were equally conclusive in relation to the reformatory or preventive effects of that mode of imprisonment. With respect to the latter topic, when we go beyond the proofs afforded by the known proportion of recommitments, it is well observed by an intelligent European writer,* that "opinions concerning the deterrent nature of different kinds of punishment can only be considered as the mere expression of the views of an individual on the subject." How such views are influenced by previous training, and by circumstances, every one knows.

As the original forms of controversy became chronic, an impulse was given to the very question which has just been noticed as one likely to be embarrassed by the preconceptions of each observer. The rude survey of classes which was practised in the earliest days of reform, had been succeeded by a careful observation of individuals; and this minute consideration of human minds, in hours of kindly personal intercommunication, led naturally to the application of those moral conclusions which are formed in the general intercourse of life. The philosophy of MOTIVES both as to the past and the future career of criminals, became a more prominent subject; and the State being regarded as a tutor in virtue, as well as a represser of violence and crime, the ideas of our educational systems obtained freer currency amongst the students of penal discipline. Those ideas had long mingled with the plans of the most thoughtful officers of prisons, but their share in the general or particular management of convicts naturally was enlarged with the growth of those tendencies of discipline with which they had the closest affinity.

It is fortunate that our experience in this respect has not been confined to the people of one nationality; but has been gained through trials of various kinds in most of the states of Europe as well as in those of America. We have thus been

* Baron Von Holtzendorff, Prof. in the University of Berlin.

enabled to distinguish between merely accidental effects, and those which, resulting from the common nature of man, or the characteristics of criminals as a class, are not affected by variations of time or place.

Amongst the general conclusions thus resulting are some which embarrass very much our endeavours to judge correctly of the effects of imprisonment of any kind. It was originally assumed that we might rely upon the same signs by which we are guided in our intercourse with men at large; that, for example, apparently sincere repentance for misconduct, followed by a careful observance of disciplinary rules, however stringent; a uniform profession of regard for the obligations of religion, and of social law; and an absence of discernible grounds of suspicion, are really proofs of interior reformation, and of a serious purpose of amendment of life. In proportion as an individual, by his attention to the offices of piety, and by his appeals to the sympathy of a chaplain or other benevolent visitor, secured personal confidence, the proofs just mentioned were allowed greater weight. The phraseology of some of the earliest reports of chaplains would justify the inference that, in the prisons to which they refer, the success of preaching and conversation amongst convicts was incomparably greater than is ever witnessed in the free community.

Some special circumstances invited strict inquiry into these manifestations of change of character. In Europe many of the essays to establish a safe and reformatory discipline were made in consequence of an opinion that cellular confinement is dangerous to health, and that it should be authorized only during short terms, and as a preliminary to associate labour; or in the case of prisoners too vicious for congregate rooms. In some places systems of classifications were adopted, dependent upon observations of character and conduct. Thus a very extensive trial, by a large number of intelligent persons, was made of the value of conclusions drawn from the conduct of prisoners.

Upon the whole there has resulted entire unanimity upon the following propositions,

First, THAT IT IS IMPOSSIBLE TO FORM A RELIABLE JUDGMENT OF THE VALUE OF OUTWARD SIGNS OF PENITENCE;

Second, "THAT A STRICT OBSERVANCE OF PRISON RULES AND DISCIPLINE CAN NEVER, BY ITSELF, BE A FAIR CRITERION TO ENABLE US TO JUDGE HOW A PRISONER WILL CONDUCT HIMSELF AFTER HE HAS OBTAINED HIS LIBERTY."

It remains then that we trace every convict through his career after discharge, which has not been and cannot be done in this country; or that we fall back upon the reports of reconvictions, which can never be wholly satisfactory, unless for general comparison of system with system in parallel circumstances. This method would clearly be unserviceable for any "EDUCATION," the steps of which are to be determined by the moral condition of its subjects at successive periods of a term of confinement.

Beside this difficulty, one of another kind has been rendered certain by common experience, viz.: that of the inmates of every convict prison one portion is incorrigible; another will never return to imprisonment,—the conviction and penalty, or other causes, being sufficient to prevent a recommitment; and a third, intermediate class, the members of which may or may not return, according to the accidents of temptation, means of livelihood, &c., after discharge; and THAT IN A MAJORITY OF CASES, IT IS IMPOSSIBLE TO DETERMINE TO WHICH OF THESE CLASSES A PRISONER BELONGS.

It is obvious then, that any educational method which we may adopt must be prescribed for ALL the inmates of our penitentiaries, and that we must take the risk of its applicability to individual cases.

There is, however, another view of the subject which deserves the most serious attention. Man is of very compound nature; the motives which influence him are numerous and various; and it is often possible so to present these that gradually, insensibly, he may be led from one habit into another, without the need of any one great voluntary effort on his part, or of any great reliance upon his purpose of amendment. If his purposes are infirm, if he is ignorant or indo-

lent, or careless, or hopeless, or all of these, may we not instruct and stimulate him, concentrate his powers, and invite him successfully to a new life; and may we not do these things by the use of means which will work no harm where they happen to be employed upon incorrigible persons?

To a considerable extent this has already been done in the penitentiaries of Pennsylvania. It is by no means a naked imprisonment to which the law consigns offenders in those institutions. Beside the attention which is bestowed upon the comfortable lodgment, food, and clothing of the inmates, provision has been made for their instruction in labor as a means of discipline; a school-master offers to them an opportunity for improvement in reading, writing and arithmetic; a library furnishes them with wholesome books; a moral instructor goes from cell to cell for edifying and encouraging discourse, and on Sunday he expounds the primary truths of religion and morality, with suitable exhortations. For further stimulus, those who can and will labour at such handiwork as admits of the allowance, are credited with a surplus over the necessary task of each day. Furthermore the law authorizes the visits of a number of honest persons from the free community. As between the prisoners and the officers in whose custody they are, there is on the one hand all the influence of kindly and cheerful intercourse, and on the other that of privation of work and books and food, and unmitigated solitude, as punishments for bad behaviour.

Here is certainly a very extensive apparatus not only for imprisonment, but for appealing to the heads and hearts, the recollections, sympathies, fears and hopes, of men. Is it sufficient?

The answer to this question is likely to be qualified by the greater or less effect of considerations somewhat conflicting. A frequent visitor to the cells of a prison, will, if he is a man of benevolent feelings and lively sympathies, be deeply impressed by the manifestations of suffering which he sees. There, as well as elsewhere, "the way of the transgressor is hard." The law designs that it shall be so. The visitor will observe

young offenders whose homes have been saddened, whose enjoyments have been cut off, whose prospects have been blackened, and who, in the bitterness of fresh remorse, see before them only public shame and private misery, yet whose souls yearn to work out, if possible, a deliverance from the wretchedness in which they are plunged, and which threatens all their future. He will see men whose strong passions, never disciplined in early life, have broken out upon some sudden exasperation, and produced ruinous consequences to themselves their wives and their offspring, which they would retrieve, alas! how gladly! He will see men who, unsustained by the endearments of the parental roof, or by the motives of decorous society, have yielded resistingly, step by step, to disastrous companionships, and who, counting every step, would eagerly grasp at any offer which might enable them, at whatever sacrifice, to regain even the discouraging circumstances in which they began their descent. He will see men borne down by the privations of years in prison, and who crave the light and freedom of the world as though their sufferings had already more than atoned for their wrong doing in a society where so many evil deeds pass with scarce a reproof. In short he will see concentrated all the regrets, the dejection, the wearying longings, the helplessness and the hopelessness which follow crime into its hours of self-consciousness in prison. Tears, protestations, promises at the moment sincere, entreaties, appeals vehement or mournful, shake the visitor's firmness. He sympathizes at last with the prisoner for his very crime as a misfortune; and looking into his own heart as under the scrutiny of the Heavenly Father—the criminal's and his—he cannot avoid a sentiment of community in the need of forgiveness, and of new opportunities for a better life. The firm severity of the law seems to him a violation of that charity which renews its grace even to "seventy times seven."

On the other hand, the legislator or the jurisprudent, who does not confront individuals in such circumstances, but who contemplates men and things in the general, fixes his regard upon the dangers to which society is exposed, and upon those

other considerations which in all communities have led to the prescription of penalties for offences against social order and safety. He regards the laws of such communities as he regards the laws of nature. They may occasion particular inconvenience or suffering, or even seeming injustice, but they are necessary to the common good and must be inflexibly maintained. The pain which they inflict upon individuals may be an unwelcome subject of reflection, but not the less is it necessary.

Between these extremes of sensibility, each of which diverts unduly the views of an observer from what is proper to the other, there has been a constant struggle during the progress of penal reform. The degree of severity to be maintained, the limits of its duration, the kind and number of positive mitigations to be provided, the allowance to be made for manifestations of repentance in prison, have been discussed without intermission. One of the most familiar examples of such topics is that of PARDONS. The contest between feeling and the convictions of duty to the public has exposed most of our Executives to a lamentable harassment. In vain have the clearest requisitions of public policy been put in array against the urgency of friends, of humane citizens, of partisan adherents. Perhaps in no respect has the Philadelphia Prison Society been more steadfastly conservative than in its opposition to the undue exercise of executive clemency. Its records are full of evidence of its firmness in resisting interference, except in rare and very peculiar cases, with that character of "inevitableness" which all governments have regarded as of vital importance to the efficacy of punishment.

Still, the question recurs, may there not be found some intermediate adjustments by which the certainty and reasonable inflexibility of public justice can be reconciled with larger concessions than have been heretofore made to good resolutions and good conduct on the part of convicts in the cells. Can we not make such concessions so to depend upon the self-control and voluntary effort of prisoners, as to ensure at once a protection against useless despondency, and an encouragement to

the formation of habits of industry, order, and submission to authority?

Our readers do not need to be reminded that this question has been very differently suggested in this country and in Europe. Abroad, the method of cellular imprisonment was introduced in the midst of great and general prejudice against it. Its dangers were overrated, its means of reformation and of preparation for free life were underestimated; and, although its great merits caused it to make extraordinarily rapid progress in foreign States, yet its introduction was accompanied by so many protests, and was guarded by so many cautions, as to indicate a less favourable view of its character and effects, than was taken in Pennsylvania where it had been tried. The preconceptions which embarrassed the early stages of the foreign experiment have never lost all their influence; so that while in our own penitentiaries the official reports have constantly accumulated proofs of the safety and moral advantage of convict separation, in England, on the other hand, the length of the term of cellular confinement has been diminished from time to time, until accident, which so often determines the direction of social plans, turned the public attention into new channels. Thus while everywhere the peculiar efficacy of separation has continued to be acknowledged, we find in some quarters a growing disposition, not only to limit it to the first months of incarceration, but to cause it to be followed by various modes of associate instruction, labour, and general probation. It is easy to see, therefore, that the efforts which are made amongst ourselves to improve our discipline have a starting point, and are guided by ideas, which cannot be represented by any of the proceedings of foreign reformers.

Nothing in the history of the prisons of Pennsylvania, nothing in that of the Philadelphia Prison Society to whose efforts the establishment of those prisons is due, affords more conclusive evidence of the rational moderation which has characterized our experiment than is to be found in the unintermitted exertions of our prison officers, and of the Society, to develop in the most liberal manner the means of health and of discipline

which have been adopted by the government. Quite apart from any unfavourable results of trial heretofore—because no prison in the world exhibits more satisfactory returns than our own—but from an unvarying purpose to lose no opportunity for meliorating the instrumentalities of public justice, our prison officers and the Society, contemplate habitually the possibility of improvement. Hence many suggestions which if originating abroad might properly be accepted as fresh evidence of distrust or of partial failure, spring at home from a zeal to carry our penal institutions to the farthest degree of completion. Hence, too, the question to which we have adverted as occupying the minds of the friends of humane reform, has naturally arisen amongst us without prejudice to any previous general conclusions respecting the health or moral agency of our penitentiaries.

Before any definite plan had been developed either by the officers or by the Society, the accident to which we have referred as giving a new direction to foreign efforts, had collected for us some very impressive illustrations of the main elements of our problem. It is known to our readers that at the introduction of the cellular method into England, through the efforts of Messrs. Crawford and Russell, the transportation of convicts to penal colonies was a usual resort of the government. The model prison at Pentonville was designed for the probation and improvement of prisoners destined for the colonies. It was believed that the efficacy of the discipline was such as at once to ensure, in a large number of cases, a reliable preparation for colonial life; and in all, such an ascertainment of character as might properly determine the privileges to be conceded to each convict upon his arrival in his new abode. When the refusal of the people of the settlements to receive more prisoners threw back upon the Home government the duty of providing for their custody in some new manner, the task was the same which we encountered at the outset. We undertook it by means of continual confinement in our penitentiaries, till the expiration of the legal term of sentence. In England, however, where the period of cellular confinement

had been reduced at the recommendation of the Surveyor-General, Col. Jebb, and where associate labour habitually followed the separate, the plans proposed for disposing of the increment of criminals at home looked wholly to the public works. In 1850 Col. Jebb said, in his official report, "As the moral result of the discipline to which convicts are now subjected during the period of their imprisonment in this country mainly depends upon the arrangements made for the men working in association on public works after a period of separate confinement, I have felt more than ordinary interest and anxiety that it should be placed on the most effective footing." A select committee from the House of Commons, in the same year, spoke as follows, "The committee concurs with some of the most experienced witnesses they have examined, in the opinion that a great majority of convicted prisoners are open to the same good motives and good impulses which influence other human beings, and, therefore, that a system of encouragement to good conduct, and endeavours to inspire feelings of self-respect, self-reliance, and hopefulness for the future, which have been tried in some of our largest establishments, ought to be adopted, so far as it is practicable without impairing the penal and deterring character essential to any system of imprisonment." It cannot be doubted that these humane suggestions express very fairly the sentiments and aims with which the English authorities confronted their responsibilities.

Without tracing all the steps of their endeavour, let us look at the latest, most complex, and as its friends and encomiasts believe, the most successful, of the arrangements which have been devised to bring about that "self-respect, self-reliance, and hopefulness for the future," which were declared to be so desirable, and which are recognized so to be wherever an enlightened philanthropy has probed the sources of crime, or proffered the hand of succour to the criminal in prison. The example which is before us is in no respect equivocal. That it represents British opinion we are assured, beside other modes, by the fact that the credit due to the establishment of it is claimed at once for the most active of British reformers and adminis-

trators—for Col. Jebb, for Capt. Maconochie, for Capt. Crofton—under the last of whom it has assumed in Ireland its most remarkable phase.*

Let our readers note that the convicts must pass at least nine months in the separate cells. They are classified according to their previous conduct, that is to say the lowest or “probation” class being composed of such as have received bad marks for misconduct in the cells, and such as have not passed the full period of separation. From this class, promotion is dependent solely on the behaviour of the prisoner, and the rules are peculiarly severe. The next class (3d) is composed of those whose conduct was good during separation. The time in this class is from two to six months, according to behaviour. In the next class (2d) six months is the minimum period for the best. For the next (1st) class, the shortest period is 12 months, after which, there is a further promotion to an “exemplary” or, “advanced” class, in which the remainder of the sentence unexpired, whatever that may be, is to be passed by the convict.

Concurrent with these numerous stages of promotion, is a series of degradations. Moreover there are badges, and modifications of dress, and there are books of record in which general character is noted, and misconduct books in which faults are entered as “slight,” “1st degree,” “2d degree,” and “3d degree.” For these the punishments range from the loss of a meal, up to many days of separate confinement, and even degradation to the probation class.

Again, gratuities are accorded to the classes, thus: Probation class, none; 3d class, a penny per week; 2d class, two-pence; 1st class, three-pence for the first six months, and four-pence for the second six months. In the advanced, (exemplary) class, seven-pence are allowed. By extra exertions and industry these gratuities may be raised to nine-pence per week, or they may be forfeited altogether by misconduct.

* We of course do not turn aside to remark upon the controversy to which these claims have led. In any event, the zeal, intelligence, and independence of purpose manifested by the Irish director, will secure for him an eminent place in the history of British prisons.

Such is the series of devices by which during a period of at least 29 months, the convicts are to be prepared for the final test of their character and resolutions. This test is made in the "Intermediate Prisons." "Here," says a friendly writer on the subject, "all or nearly all connection with a prison life is suspended, even to the mere outward man, the growth of the hair, and the dress of the tradesman. Past offences and past punishments are never mentioned, or are only mentioned with a special and exceptional intention. The men, more even than in the Penal Establishments, are treated as men, as human beings, as beings endowed with reason, as reasonable creatures who have acquired the sense of accountability, as accountable agents who have now a character to win, and a character to lose, in a word as Christians."—"Each prisoner upon promotion to the exemplary class is sought to have it explained to him the object of his removal, the privileges of his position, the duties of his probation, the responsibilities of his advantages. The voluntary system is here alone resorted to; voluntary labour, voluntary discipline, voluntary education, voluntary temptation. Honour, the felon's honour is the principle of his heart here appealed to, &c."—"Liberty of conduct is fully accorded, but being fully accorded and once in the most trivial manner abused, is here irrevocably withdrawn. Hence a man who once proves himself unworthy of the partially restrained liberty of an intermediate establishment, is considered unfit for the less restrained liberty of tickets of license or the unrestrained liberty of unconditional discharge."

How many convicts, will the reader conjecture, have shown themselves, after passing through at least 29 months of preparation, to be fitted for the freedom, the temptations, the trusts, and the risks of the intermediate stage just described? "Seventy-five per cent," we are told. This is indeed an encouraging proportion; for be it observed that in this advanced stage of trial, the prisoners are allowed to go to and fro alone, through a large town, by taverns and restaurants, and other places of greater temptation; and in these respects they certainly need the preparation of an effective discipline. It is under the eyes of the intelligent and vigilant officers that this

probation is accomplished. It can scarcely be supposed that they would admit to it any criminals who had not exhibited most convincing evidence of their desire for amendment. If they could have been indifferent to other motives, they must at least have been awake to the fact that by the operation of the system which they were administering a large number of convicts must be discharged before the expiration of their term of sentence. To guard against some of the possible consequences of such a reduction of the nominal penalty, the criminal code was revised so as to lengthen the effective period of judicial sentence, and to admit of the interposition of a probationary period within which good conduct might hasten the discharge of the well disposed, or secure a full infliction upon the incorrigible. Upon the prison officers, therefore, it depended what security the community should have against the untimely liberation of irreclaimable enemies of social order.

When Capt. Crofton, to whom we are indebted for the Irish experiment, began his most interesting trials, he encountered a difficulty which appears to have been the prime suggester of the reasons for his elaborate "Intermediate" plan, and for his persistence in a system of "conditional liberations." He says, "WE WERE THE ONLY ENLIGHTENED COUNTRY WHICH HAD SUCH IMPLICIT FAITH IN PRISON TRAINING AND REFORMATION, AS TO DISCHARGE HABITUAL OFFENDERS WITHIN THE TERMS OF THEIR ORIGINAL SENTENCES WITHOUT ANY CHECK UPON THEIR FUTURE MISDEEDS."

In the year 1856, a committee of the House of Commons resolved that if it was wise and just to enable a convict "to obtain, by continued good conduct while undergoing his punishment, the remission of a portion of his sentence," it ought to be "UPON THE EXPRESS CONDITION HOWEVER, THAT IN CASE OF SUBSEQUENT MISCONDUCT, HIS LIABILITY TO PUNISHMENT SHALL REVIVE FOR THE RESIDUE OF THE TERM SPECIFIED IN THE ORIGINAL SENTENCE."

The construction put by Capt. Crofton upon this expression of opinion is that "IN ADDITION to the FIXED portion of the sentence considered to be *the minimum* period of atonement

for the offence, it is necessary that there should be another portion of the sentence for the protection of the public ;” and that OF THIS OTHER PORTION, such use should be made as will allow of conditional discharges under rigid police supervision. “It is assuredly neither right nor just that a criminal should have the power of continuing a career of crime with impunity within the term of his original sentence. He may and does commit very many crimes, and be punished several times, and still be free before the termination of his original sentence. It is obvious that the only remedy for such a state of things is, that in giving ‘conditional liberations,’ care should be taken to ascertain that the *conditions are observed*, a result which can only be obtained by means of ‘registration’ and ‘police supervision.’” Capt. Crofton bears remarkable testimony when he adds, “I do not believe that one case can be produced in which, to my knowledge, conditional liberation has been permitted to be a dead letter.” What this means may be gathered from the following “REGULATIONS,” affecting conditional discharges.

“1. Each convict will report himself to the Constabulary Station of his locality on his arrival in the district, and subsequently on the first of each month.

“2. A convict must not change his locality without notifying the same at his Constabulary Station, in order that his registration may be changed to the locality to which he is about to proceed.

“3. An infringement of these rules by the convict will cause it to be assumed that he is leading an idle and irregular life, and thereby entail a revocation of his license.”

Thus between the years 1850 and 1861, in Great Britain, with the advantage of twenty years of previous careful study and trial of modes of penal discipline, in circumstances manifesting special caution, and zealous purpose of humane administration, we learn this conclusion, that after 29 months of disciplinary methods have given such confidence to the administrative officers that they admit 75 per cent of their convicts to the novel and extraordinary privileges and rewards of the

"Intermediate Prisons," they nevertheless permit no prisoner to go into the free community before the expiration of his sentence, (purposely lengthened to meet the contingency of its abbreviation,) unless he shall at every moment be under voluntary submission to the surveillance of the police, with the risk of recommitment upon the first return to criminal associations, or even to disorderly life.

Never, during the last three-quarters of a century, has there been a more unanswerable comment upon the value of "good behaviour in prison" as evidence of reformation. "THE 'INTERMEDIATE PRISON,' WITHOUT THE ASSISTANCE OF CONDITIONAL LIBERATION AND REGISTRATION WOULD BE INCOMPLETE." These are the words of Capt. Crofton.

The comment was not needed. Since 1830, Messrs. Crawford and Russell, Inspectors General in England, Moreau-Christophe in France, Julius in Germany, Ducpétiaux in Belgium, Suringar in Holland, and a host of keepers, underkeepers and chaplains of prisons, including the most experienced of our own country, have concurred in establishing it as a postulate, that good conduct in prison is not a "criterion to enable us to judge how a prisoner will conduct himself after he has obtained his liberty." All those persons whose opportunities for observation and whose intelligent use of them present the most weighty claims to our confidence, agree that the "worst convict generally makes the best prisoner." Many years ago, the Warden of a New York prison said, "I have always remarked that the worst subjects make excellent prisoners. They have in general more skill and intelligence than the others, they perceive more quickly and more completely that the only mode by which they can render their situation more tolerable is to avoid the painful and repeated punishments which would be the inevitable consequences of insubordination; they behave well, therefore, without being better for it. The result of this observation is, that a convict ought never to be pardoned solely for his conduct in prison. It is only a way to make hypocrites."*

* See De Beaumont and De Tocqueville's Penitentiary System of the United States. Appendix No. 11.

It is always important to define clearly the objects of any proposed change for the sake of reformation. In this case, we see that whatever other purposes our efforts are to serve, we cannot expect to obtain from the conduct of convicts in prison, either evidence or security in relation to their conduct after their discharge; and consequently that in making good behaviour the condition of any new advantages to prisoners, we are acting, not upon any proofs of moral improvement in themselves, but only upon general principles which affect all human beings as such, and upon a general desire to accumulate as far as the public safety will allow the motives which tend to correct vice and to promote virtue.

Whatever theory may be adopted with respect to the proper object of penal laws, whether it is to punish criminals or to reform them, or to protect society, or all of these things together, it cannot be doubted by any persons accustomed to consider the subject that, IN FACT, the element of suffering is essential to any useful prison discipline. In the education of children, and in the restraint and correction of adults, there is a necessity for the use, to some extent, of those motives which inspire fear, and the regrets and resolutions which spring from painful consequences. There is, therefore, a check upon our wish to diminish the inconveniences of prison life. However strong our sympathy, however charitable our estimate of the circumstances which qualify the criminality of breaches of the public law in any case, we cannot escape the necessity of maintaining such a degree of wholesome severity as will impress the free community, as well as our prisoners, with the gravity of those acts the perpetrators of which we punish. It follows then that a naked purpose to abate the the rigors of incarceration is neither humane nor rational. It aims to defeat the preventive efficacy of our code, and to make unlimited private forbearance and charity a substitute for protective public discipline. It is not enough to show that a motive is benevolent in its origin and nature; its effects must be good upon the whole.

It being true, then, that neither the promise of a prisoner's

behaviour after discharge, nor a general design to mitigate his sufferings in the cell, is a safe guide to the regulation of discipline, by what standards are we to ascertain those particulars of government which, being at once just to the honest community whose protection is entrusted to the legislature, and humane towards offenders, may answer all the requisites of the case?

Although the idea of judging of a convict's state of mind by manifestations of contrition is everywhere rejected, yet it is obvious that, whatever our method of treatment, some regard must be had to the actual conduct of prisoners. If we are to appeal to the hopes and fears of individuals, we must use appropriate motives, and apply these according to some sure indications afforded in each case. Abroad, convicts are permitted, as we have seen, to gain promotion from stage to stage, and finally a conditional liberation before the expiration of their terms of sentence. Their right to such promotion and liberation is determined by their conduct, but only as far as this is evidenced by their conformity with prison rules.

We have hence suggested another caution, without attention to which we shall much exaggerate and distort the considerations by which the community are to judge of the value of our projects of reform. The general reader who has not followed the steps of experience which have led to the restrictions now imposed upon our plans, will understand the phrase, "GOOD CONDUCT," in the liberal sense in which it is used by the world at large. He will imply that the behaviour expressed by it springs from virtuous purposes, and that it is the fruit of a spontaneous growth of proper resolutions. Nothing then, seems more natural or just than that such conduct should receive encouragement by the concession of some actual advantage. This is quite fallacious. The "good conduct" which is understood by our reformers—the only kind which it is possible to take as a test for the concessions to be made—consists simply in this, that EACH PRISONER SHALL BE RESPECTFUL TO THE OFFICERS, THAT HE SHALL NOT VIOLATE THE RULES OF THE PRISON, AND THAT HE SHALL PERFORM THE WORK ASSIGNED TO HIM.

It is certainly a great stride which has been made since the time, not long passed, when it was thought that the submission of a convict to the regulations of his prison was to be expected as a matter of course; when, if he added to his previous ill conduct the offence of insubordination, he was specially punished by withdrawal of work, by diminution of food, by seclusion in darkness, by the douche, or, in some places, by stripes. It was his duty to obey; and failing in this, he was subjected to one or other of these penalties.

The reader will observe, however, that in the later methods of discipline the fundamental idea is not to reward convicts, as of right, for their subordination and diligence; but to present to them a daily stimulus which may procure their voluntary effort to behave well. We offer benefits not because they are merited, but in order that our prisoners may grow better in striving for them. We do not pay for the maintenance of good order, but we endeavour to provide motives to hope, the effect of which shall diminish the number of violations of that order, without danger to the community, and without temptation to hypocrisy, on the part of convicts. Such rewards as these have in some form or other existed in every well regulated modern penitentiary. The varying deportment of the keeper, his growing respect and confidence, the regular and full supply of food, special comforts in the cells, the allowance of overwork and other compensations have operated as incentives to obedience and industry; and their withdrawal has served us a means of special punishment. In such cases the ACTS of individuals are the occasions for favour—not their interior dispositions or their professions.

The proposal to which the public attention of this country, is now invited by experiments in various quarters goes much further than the instances just cited. IT IS DESIGNED TO ALLOW CONVICTS TO SHORTEN THEIR TERMS OF SENTENCE BY OBSERVANCE OF THE PRISON RULES.

It will be immediately perceived that such a proposal has a very different value in the United States from that which it has under the new Irish system. The latter does not discharge

prisoners into all the liberty of the free community. After long training, it only goes so far as to place them under the strictest surveillance of the police, subject to recommitment for the unexpired term of their sentence, if they shall be found in dangerous company. In this country, there is not, and cannot be any such supervision and liability after discharge. When this is obtained, it must be absolute. Consequently the proposed plan must operate as a PARDON; and this must be MERELY FOR OBSERVANCE OF THE RULES OF THE PRISON.

We cannot, however, here admit all the objections which have been heretofore made to such pardons; because 1, The temptations to hypocrisy which have furnished ground of exception to any relaxation of penalties accorded by reason of outward signs of penitence, have no place under the new régime. OUTWARD ACTS alone, and these CONSISTING ONLY IN CONFORMITY WITH PRISON RULES, constitute the reasons for abbreviation of the term of sentence. 2. These outward acts are of a definite nature; and a constant record of them is to be kept by the prison officers, so that we have our inquiry reduced to the simplest form, viz.: WHETHER A MERE OBSERVANCE OF PRISON RULES OUGHT TO SECURE, TO CONVICTS OF EVERY CHARACTER AND EVERY GRADE OF CRIMINAL OFFENCE, A PARDON AS TO A CONSIDERABLE PORTION OF THEIR RESPECTIVE TERMS OF SENTENCE?

One thing is certain; the worst criminals being those who least frequently commit breaches of the regulations of our prisons, they will obtain the largest advantages from any plan which confers its favours because of the avoidance of such breaches. The proposed method makes its concession to all convicts alike; and it undoubtedly must shorten the sentences of the incorrigible class for the sake of convicts who may be still open to good influences; unless in the application of the benefits of the record to be kept, some power is reserved to exclude those offenders whose known persistence in crime has rendered their reclamation improbable.

How far such a discrimination is expedient may be better estimated after a review of the reasons given by the friends of

the change now under trial and consideration in this country. They allege that the first effect of a sentence to hard labour in prison, is to depress the convict; to exaggerate the prospective term of his confinement; to excite a feeling of antagonism against society, whose tribunal has consigned him to what appears a vindictive punishment; to cloud the probability of restoration to the usefulness of manhood, and thus to separate him from the sympathies, and the common offices of brotherhood, of his fellow men. They allege that if at the moment of his subjection to suffering for his violation of the rights of others, he can be taught that his punishment is not at all vindictive, that it looks not only to the protection of the honest community, but also to his own reformation by kindly means, he will be more likely to acquiesce in the justice of his arrest and incarceration, and to make a reasonable estimate of those obligations which he has violated. They further allege that the habitual observance of wholesome rules, even where the object is personal advantage, tends to prepare each prisoner for conformity with the system of self-restraint and the mutual respect upon which the order of society depends. It is also said that a reward which secures uniform good conduct in prison, can do no harm even to the least corrigible subject of judicial sentence.

Recurring to the classification mentioned on a previous page, of convicts as, 1st, incorrigible; 2d, certain never to return to prison; and 3d, intermediate or doubtful, it would seem only reasonable, at the outset of an experiment seriously affecting the stringency of our penal code, to procure for ourselves some evidence in relation to the most promising classes before committing our entire system to the hazards of an untried régime. Many precautions are practicable. Thus, we might use our record of behaviour in prison only as one consideration for the Executive, instead of making it absolute in its effect. We might restrict its advantages to minors, or to persons convicted for the first time, or to convicts for long terms. With respect to every class, it is worthy of observation that the unvarying testimony of European prison officers is, that in every case,

whether of short or long imprisonment, there is a period during which the weight of punishment should be felt without mitigation, and without hope of abridgment. In England, Col. Jebb has reduced his average to one year. Capt. Crofton is satisfied with nine months. Nowhere abroad has any one suggested that the force of the penalty for crime should be abated at the moment of its first infliction.*

Notwithstanding the weight of adverse evidence from every quarter prior to the introduction of the experimental suggestions to which the philanthropic hopes of prison reformers have now led us, it must be admitted that the concurrent conclusions of a large number of experienced and intelligent observers of the practical effects of prison discipline demand of us a review of our previous conclusions. We are called upon to determine in what form, and under what restrictions, we may render the efforts of a prisoner, while undergoing the suffering prescribed by law for misconduct, either the means of his reformation, or a reason for lessening the penalty prescribed to him.

It is interesting to observe the various modes in which this problem has been subjected to trial in the United States. Yet, when we attempt a survey of our own prisons, it immediately becomes obvious that no general conclusion can be drawn from them in relation to our present subject. The penitentiaries of nearly all of the Southern States have been organized and conducted upon principles, and for purposes differing so widely from those which have guided the legislation and the administration of prisons in most of the States of the North, as to render a grouping of the whole impracticable. Indeed, in the Southern penitentiaries, discipline appears generally in the rudest form of the modern associate régime.

* Rev. Mr. Field, one of the most experienced and observant writers in favour of the separate system, could not have anticipated the extremes of our latest reformers when he wrote the following: "It may be asserted with confidence, that in a prison where the extent of confinement is limited to two years, any hope that a time so short might be contracted by good behaviour, however much it might promote order and cautious obedience, would most surely lead to much deception, and seriously counteract the design of imprisonment."—*Field on Prison Discipline*, vol. i. p. 254.

In the States west of the mountains, it is well known that prison government has not advanced as rapidly as in those east of them. The fact could not have been otherwise. At the time when Pennsylvania was laying the foundation of the cellular method for herself, Ohio, now the easternmost of a series of States having a population of several millions, was in the occupancy of savages, and a bloody war was going on for their conquest. At the period of hottest controversy between the partisans of the separate and of the congregate plan, some of those great States had just emerged, or were only preparing to emerge, from a territorial condition. The exigences which press upon new communities and commonwealths, engaged necessarily the principal attention of our Western settlers, so that scarcely an echo reached them of that controversy which seemed so important to the reformers of the East. Of course, the first essays at penal discipline took the form of association. To confine criminals as a distinct class, for punishment, and to prevent them from committing depredations upon the honest community, and to make them work for their maintenance, were the chief ideas there, as every where else, in the earlier stages of progress. The humane feelings proper to the age and country naturally influenced penal establishments to some extent, but not as rapidly as other institutions. The belief that prisons can and ought to be made to pay all their expenses, and even yield a profit to the State treasury, affected perniciously germs of reform which from time to time sprang up under officers of peculiar intelligence or humanity. Information of what had been done in Europe and in the Eastern States, was not generally diffused. Practically, each officer endeavoured to administer his rude machinery of government in the best manner suggested to him by his personal experience, or that of his predecessors, in the particular prison. These facts are manifested by the official reports made from year to year.

It cannot be doubted that some progress has been made in this way; but the fact itself, that all of the Western prisons have been struggling upward from the lowest stages of discip-

linary condition, would, amongst students of general experience, be sufficient to excite doubt as to the effects due to any one of the numerous details of penitentiary administration. In Massachusetts, in New York, in Pennsylvania,* a mere change of officers has wrought surprising and very gratifying changes in the fruits of an administration the form of which remained unaltered. In Ohio, within the last two years, we have it upon the testimony of the inspectors, that simply by a supply of more wholesome provisions a mutiny was quelled, stubborn insubordination entirely repressed, and a promising state of feeling secured among the convicts. If, then, we would ascertain the value of new features introduced within a given period into the management of a particular penitentiary, we must first learn what other new features have been introduced which might have either augmented or diminished the good or evil tendencies of the measure in question.

It should be remarked, that the very fact that the officers of a prison are seeking to render it both more humane towards convicts, and more reformatory, evinces the existence of an administrative spirit which must, without other causes to aid it, greatly improve the results of the discipline in force. To attribute such an improvement exclusively to one experimental detail introduced into the daily management, would not be consistent with the carefulness demanded by so grave a subject.

After all, too, there is a truth, the universality of whose application gives to it a fundamental character, viz., that "comparisons between new and old systems must always contrast favourably for the one at present adopted."† The reason is obvious. The new system is chosen precisely because it appears to be the best adapted to remedy recognized defects or positive mischiefs. It is put in operation with the extraordinary zeal and activity which characterize novel efforts. Its management, and the reports of its effects, are under the con-

* Moyamensing Prison; a county prison used partly for convicts.

† Von Holtzendorff, writing in favor of the new Irish system, thus expresses a caution to which, as an intelligent observer, he was endeavoring to submit himself.

trol of its originators and friends. Its initial results, therefore, are favourable. Such has been the history of the score of attempts made in different countries to modify for the better the framework of discipline; and that history has continually multiplied reasons for distrusting the earliest conclusions respecting the comparative permanent value of any element of discipline, under any system separate or congregate.

That these views are not unjust to that important section of the United States which has been bringing its chief prisons through the first stages of development, is proved not only by the considerations already mentioned as incident to the civil condition and needs of the young States which have so rapidly grown up, but by others, upon which our limits will not allow us to dwell.* Among the congregate prisons of the Eastern States, that of Massachusetts has long had a leading place. The Prison Discipline Society of Boston, the chief advocate of the congregate plan, exercised an important influence over the administration of the State prison. Its officers had the fullest opportunity to profit by whatever was published respecting essays on prison government both in this country and abroad. The internal management of the penitentiary of that State has consequently been generally regarded as the exemplar of its class in the United States. No little advantage, therefore, is gained for the project of shortening terms of sentence, from the fact that in one form it has been adopted in the Massachusetts State Prison, and that after a trial of several years it still has the confidence of the Warden. It is of fundamental importance, however, to notice that, with a very liberal estimate of the benefits resulting from the allowance of a reduction of time of

* For example, in the year 1859, the officer who, under the law of Wisconsin, was entrusted with the management of the chief prison of that State, found himself so much in need of information of the comparative merits of disciplinary and economical details of which he could not obtain satisfactory illustrations in the neighbouring States, that he ventured upon an appeal to the officers of prisons throughout the United States to meet in an Atlantic city, Philadelphia. At the convention there held it was apparent to all, that neither the history nor the administration of the penitentiaries of the East was familiar to the Western officers.

confinement as a reward for good behaviour, the conservative suggestions of experience have so far restrained the officers and the legislature, that they have made the reduction to depend upon a review of the circumstances of each case by the Governor and Council, to whom the pardoning power constitutionally belongs, and who may be influenced by many other considerations than that of mere observance of prison rules.*

In Ohio and in Michigan, prominent states in the West, the mere record is of absolute effect. The Warden in the former, and the Inspectors in the latter are peremptorily required to discharge every convict at the time to which his sentence shall have been reduced by the allowance per month for non-violation of rules. In Ohio, moreover, the convict who passes the whole of his period of confinement without infraction of the rules, becomes thereby entitled to a certificate upon the presentation of which to the Governor, he must restore the convict to all rights of citizenship.† It is also provided that the Directors and Warden at their discretion may suitably reward any prisoner who, by meritorious conduct may signally serve the interests of the institution and the State, and may permit any extra reward to be given to prisoners, not interfering with the interests of the State. In Iowa the reduction is absolute, and the prisoners are entitled to a like certificate and restoration

* The provision is as follows: "The Warden shall keep a record of the conduct of each convict, and for each month that a convict appears by such record to have faithfully observed all the rules and requirements of the prison, and not to have been subjected to punishment, there shall, with the consent of the Governor and Council be deducted from the term or terms of his sentence as follows: for a term of less than three years one day, for a term of three years and less than seven years, two days; from a term of seven and less than ten years, four days; from a term of ten years or more, five days." Another section requires that the record of conduct shall be submitted by the Warden to the Governor and Council when required by them, "that the same may be considered in the exercise of such executive clemency on behalf of any convict as they may deem conducive to the interests of the prison, and promotive of the reformation and welfare of the convicts."

† Under the Revised Penal Code of Pennsylvania in all cases of felony and misdemeanor, (except perjury,) punishable by imprisonment at labour, the enduring of the punishment has the effect of restoration, which was previously dependent on the Governor's pardon.

to citizenship as in Ohio. In Wisconsin, the chief officer of the prison "may at his discretion, diminish the term of any convict sentenced for a specified time, not more than five days" (per month). A monthly certificate is to be filed in each case. Restoration to citizenship is secured simply by the certificate of the deputy-commissioner, countersigned by the commissioner, that the convict, during the term of his confinement has, "maintained a good character for obedience, industry and integrity."

The beginning of the trial of these various methods has been too recent in all of the States to afford the least proof of their effects upon prisoners AFTER DISCHARGE.* In relation to behaviour IN PRISON, the result has been, as every one would anticipate, a diminution of breaches of prison rules. Who can doubt that obedience will be more ready in proportion to the advantage offered for it? The officers, relieved of the necessity of special punishments in many cases, and encouraged by the more cheerful and constant observance of their regulations, have found their own duties lightened, and they consequently bear this testimony in favour of the new régime.

[†When, therefore, the Philadelphia Prison Society came,

* Let the reader suppose that a wall or a rock of huge thickness forms the barrier to egress from one side of a prison; and that each convict is told upon his entrance, that if he will cut his way through a given number of inches of the barrier during each month he shall be free upon his effecting his passage to the country beyond, provided that he shall meantime commit no breaches of the prison rules. It is likely enough that he will work hard, and that he will strive to avoid having any marks against him for misconduct; but does either his labour or his obedience come within the commonly received notions of penitentiary discipline of criminals? What promise does either afford of interior amendment, or of the security of the public against crime?

A strong advocate of rewards for good conduct in prison tells us that the "prison character" which a convict obtains during the period of penal restraint, "is of a mere negative kind, and may only prove that he has sufficient cunning to take care of his own interest, by observing the discipline of the prison."—*The Irish Convict System*, p. 134.

† The paragraphs in brackets were refused admission into the Journal. The writer now prints them upon his own responsibility. The reader will see how great a change has been lately effected in the former liberal policy of the Society, which sought the fullest discussion not only of the penal system of the State, but of all the measures of the Society itself.

within the last year, to a consideration of the subject, it found amongst the most intelligent officers of prisons abroad and at home, a belief that under every form of discipline, whether on the separate or congregate plan, it was desirable to change in some particulars the character of the incentives offered for obedience to prison rules, and to augment the motives to continual industry and order in the cells or shop. Yet there was apparent the great discrepancy to which the writer has adverted, between foreign ideas of reform, and those adopted in the United States. It was manifest, not only that the safeguards which in Europe are regarded as essential conditions of public safety, must be impossible here, but also that even the successive stages of trial by which convicts are advanced from time to time are unavailable at present in the congregate penitentiaries of our country; in those upon the plan of cellular separation they are of course altogether out of the question. It was too an impressive fact, that in the State whose judgment was entitled to the highest consideration, it was not deemed prudent to take from the Governor his control over each case as it should arise.

[In addition to these grave motives to caution was the opinion of the Inspectors of the Eastern Penitentiary, that, at the outset, the experiment, if made in our own prisons, should be confined to MINORS ON FIRST CONVICTION, and to PERSONS BETWEEN 21 AND 25 YEARS OF AGE ON FIRST CONVICTION; and that for the latter class the proposed reduction should not begin to take effect until AFTER THE FIRST TWELVE MONTHS OF IMPRISONMENT.* The experience of those officers sustained that reported to us from abroad, in relation to the delicacy and the

[* "That in all cases of first conviction for crime, of minors, the term of imprisonment shall be terminated by the Inspectors, with the consent of the president judge of the court in which such minor was sentenced, when in their opinion the punishment has produced its expected results.

"That in all cases of first conviction for crime, of persons between 21 and 25 years of age, the term of imprisonment shall in like manner be lessened, as a reward for good conduct, by the reduction of three days in every thirty after the first twelve months of imprisonment."—*Thirty-second Annual Report of the Inspectors of the Eastern Penitentiary*, page 41, (for the year 1860).

hazards of the change in question, and also in relation to the importance of securing a certain period of inflexible penalty at the beginning of each term of sentence.

[Certainly the circumstances were such as to demand in an extraordinary degree the reserve and prudent carefulness which have heretofore usually characterized the resolutions of the Society; and in the inauguration of an experiment upon which there were apparent so many conflicting opinions, it was especially desirable to secure that harmonious co-operation which is so satisfactory a feature of the history of the concurrent labours of the Society and of the Inspectors.

[Fresh motives to such carefulness and such harmony might have been found in the fact, that in the Society itself there was a serious difference of opinion. The committee to whom the subject was referred was by no means unanimous; the discussions upon the report of that committee were repeated and prolonged; and the final vote upon its recommendation, as recorded, shows seven nays to thirteen yeas in the Acting Committee.*

[It is to be regretted that, after these manifestations of disagreement, the draft of law proposed was not seriously examined and discussed in both houses of the Legislature, in connection with the recommendation of the Inspectors, and such other materials for sound legislative judgment as were accessible. On the contrary, the Committee of the Society, pursuing an independent course, presented to the Judiciary Committee of the Senate the draft of law, with the memorial adopted by a majority of the Acting Committee—there was no opposition, no special investigation—the next morning the bill was reported—it passed the Senate after a few words of comment. In the House, it appears to have slumbered until

[* It is due to the completeness of the history of this movement to notice the fact, that a large proportion of the affirmative votes were given by members whose connection with the Acting Committee was comparatively recent; and that, of the members present who had had the longest experience of our penitentiary system, and who had given most attention to the foreign evidence upon the subject, a considerable majority voted in the negative.

within a few minutes of the midnight before final adjournment, when it was suddenly called up by the member who had it in charge, and it was immediately passed without question and without debate! That its passage was wholly due to the kindly and respectful consideration usually accorded by our Government to the representations of the Society, cannot admit of a doubt. Whatever claim the law may have to the confidence of the community depends upon its own merits and the vote of the Society, and not at all upon the appropriate motives to respect a formal act of legislation.*]

It will be seen upon inspection of the recent act of Assembly, a copy of which is subjoined to this article, that it goes to the furthest extreme in its allowance. Whether a sentence be for seven months or for fifteen years—whether the prisoner be a minor on his first conviction, or a hardened convict on his sixth—the simple fact that the conduct-book contains no record of his violation of the prison rules *ipso facto* works his pardon at some time before the expiration of his term. This latitude of concession becomes the more serious when it is remembered that, in the actual execution of the law, the UNDER-KEEPERS, upon whose report the Warden must depend for the particulars of his record, are the real successors to the high prerogative of Executive clemency.

[The writer trusts that before the next meeting of the Legislature, some arrangement shall have been made which will procure for us a judicious form of experiment, with the cheerful and harmonious co-operation of all the parties upon whom we must be dependent for its successful trial.]

Care should be taken to fairly open the question, whether or not our judges shall enlarge the terms of future sentences, so as to admit of the required operation of “hope

[* One result of the precipitancy or neglect which is indicated in the text has been that already three different constructions have been put upon the law. The Inspectors of the Eastern Penitentiary have declined to apply it except to prisoners sentenced for ten years and upwards. The Inspectors of the Moyamensing Prison interpret the law so as to cover all sentences from one year upward. The law itself appears to declare an intention to include all sentences for more than six months.]

and fear," in addition to the influence of an assumed inflexible minimum of punishment. "The judge estimates the dignity of the outraged laws according to a certain measure of time, CONDITIONAL ON THE SUPPLEMENTARY REVISION OF THE ESTIMATE BY THE ADMINISTRATIVE AUTHORITIES." * * * * *

"The remission of imprisonment towards the end of the sentence is a diminution of punishment which the judge defers; because his knowledge of the possibility of subduing the refractory will of the criminal must be supplied by experience, to be attained during the course of the imprisonment."*

There should too, be seasonably established some common method of reporting details which would enable us to ascertain to what classes of prisoners, and in what proportion, the benefit of the reduction of sentences chiefly enures; and thus to procure a combination of testimony. By classes, are of course meant only those groupings of prisoners which can be made by sure criteria, such as age, crime, length of sentence, whether on first, second or other conviction, and the like.† The annual reports should also give to us the means of comparing the returns of the under-keepers, in the same prison, and in different prisons; and we should always be informed whether or not, during any period, there have been introduced any material changes of administration which might influence our estimate of the effect of the reduction of sentence.

If the United States are to assume the position which Capt. Crofton tells us was formerly occupied, but has since been

* *The Irish Convict System*, page 44.

† For example: an official statement obtained from one of the Western penitentiaries in December, 1860, mentioned that during the previous year 139 convicts had been discharged; that 112 of these had received "some benefit" from the law allowing reductions of term of sentence; and that at least half of these "had the full benefit of it." Supposing that the meaning of this is that at least 56 of the 139 obtained all the reduction allowed by the law, it is important to know their ages, their crimes, their terms of sentence, how many of them were in prison upon first conviction, how many of them were habitual offenders, what evidence of amendment their general character and previous life, when known, afforded in addition to that of the conduct-book; what proportion of the bad marks were made by each under-keeper, and for what classes of offences respectively, &c.

abandoned, by Great Britain, viz.: that of being "the only civilized country which had such faith in prison training and reformation, as to discharge habitual offenders within the terms of their original sentences, without any check upon their future misdeeds,"—at least let us fortify ourselves by all rational precautions before finally committing ourselves to that position.

AN ACT RELATIVE TO PRISON DISCIPLINE.

SECTION 1.—*Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by authority of the same,* That from and after the passage of this Act, it shall be the duty of the wardens or superintendents of the several penitentiaries and prisons of this Commonwealth in which criminals are confined, who have been convicted and sentenced by any court of justice of this State to undergo an imprisonment of more than six months, to keep a book, in which shall be entered the name of each person so confined, and a record of every infraction or violation by him or her of the printed and published rules of such penitentiary or prison, with the punishment (if any) inflicted on account thereof, which said book shall be laid before the inspectors at their regular stated meetings for examination and approval.

SECTION 2.—That every prisoner or convict sentenced as aforesaid, who shall have no such infraction or violation of the said rules recorded against him or her during any month of the first year of his or her imprisonment, shall be entitled to a deduction from the term of his or her sentence of one day for the first month, of two additional days for the second month, and of three additional days for the third and each of the remaining months of the said first year of imprisonment, and shall also be entitled for continued good conduct during the second year, to a similar deduction of four days for each month during which he or she shall not have violated the rules aforesaid, and to a deduction of one additional day per month for each succeeding year until the expiration of the tenth year, and to an additional deduction of two days per month during each year of the remainder thereof: *Provided*, That it shall be lawful for the inspectors of said penitentiaries or prisons, if any such convicts or persons shall wilfully infringe or violate any of said rules or regulations, or offend in any other way, to strike off the whole or any part of the deduction which may have been obtained previous to the date of such offence.

SECTION 3.—That the said inspectors shall have full power and authority to discharge the said criminals whenever they shall have served out the term of their sentence, less the number of days to which they are entitled under the provisions of this act.

SECTION 4.—That the said inspectors shall direct the warden or superintendent to give to each prisoner, who may in consequence of good conduct be discharged at an earlier period than he would otherwise have been entitled to, a certificate thereof, stating therein the number of days that have been deducted from his original sentence for good conduct.

Sept. 24, 1862.

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