

The Walnut Street Jail: A Penal Reform to Centralize The Powers of the State

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There is something unkindly about the American prison. There is something corroding about it. It tends to harden all that comes within the fold of its shadow. It takes kindly, well-intentioned people and makes them callous (Tannenbaum, 1933: 3).

THESE ARE THE BEGINNING SENTENCES IN THE BIOGRAPHY OF THOMAS MOTT Osborne, who was appointed warden of Sing Sing prison on December 1, 1914. Osborne was indicted twice, acquitted, once on an appeal, and suddenly resigned from his post less than two years after his appointment. He became the eighth person to leave the office of warden of Sing Sing within a span of 12 years. Osborne briefly headed the Portsmouth Naval Prison before terminating his career as a prison administrator in 1920. He spent the short remaining years of his life disillusioned and discontented. In 1922, he wrote: “It makes one rather unhappy to realize the years are passing, while I could be doing wonderful work in prisons if I were only permitted to do so....” By 1924, he was in deep despair: “I have seen (my) work, so patiently built up, destroyed; sometimes brutally in a day, sometimes by long undermining, until there is now but little left. And I am condemned to heart breaking idleness, realizing what I can do to benefit mankind, and not permitted to do it. It often surprises me that I have faith in any one; and I haven’t much....” (*Ibid.*: 287). He died in 1926, literally of a broken heart as he collapsed on the sidewalk near his house.

In a recent book on penal reform, we are instructed by the author that it would be “a serious mistake to oppose any reform until all is reformed,” and since the prison is likely to remain with us, it is an act of responsibility to define rational principles for the future of imprisonment (Morris, 1974: 28–30). As I read Professor Morris’ prescriptions for a new practice, a train of names flashed through my mind—Caleb Lownes, Thomas Eddy, Elam Lynds, Joseph Curtis,

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Thomas Mott Osborne—each, well-intentioned with ideas about reforming the American prison, in the end quit, bitter and disillusioned, or, if they remained on, instituted more brutal and repressive measures.

Liberal reformers have characteristically viewed the prison as a self-contained entity, believing that the conflicts and contradictions within it could be solved through reasoned intervention. The futility of the approach is not only evidenced by history, but the explanation of their failures has had the effect of prolonging their fruitless efforts. Political interference, inadequate budget, overcrowding, poor physical plant, and more recently, radical agitators both inside and out, have been the usual explanations; and if these explanations do not apply, some mysterious qualities are attributed to the prison.

The penal reforms of the past as well as those that are being proposed today do not make any sense without a precise analysis of that which is being reformed. To put it differently, if we understand the prison to be an apparatus of the state designed as a repressive institution, then we need to understand how and why this came about. This is crucial because the prison as an entity (and the problems associated with it) are the *effects*, resulting from changes in the larger society. For example, the increased number of black prisoners since the end of World War II is directly related to the techno-economic changes that have occurred, creating what economists call technological unemployment, or a surplus labor force. Young black males have been especially hard hit, suffering an unemployment rate of 40 to 50% ever since the end of World War II, and the expansion in prison construction during the corresponding period provides a clue on the role of the state with respect to modifications in productive relations.

Perhaps one reason reformers have narrowly focused on the prison as if it exists in a social and political vacuum is because of the belief system on the origins of the American prison. That is to say, most of us have been led to believe that the “gentle and humane” Quakers founded the prison as an alternative to the sanguinary English laws then in effect, and that the idea of a prison was based upon the prevailing theory of humane reason. There are problems with these interpretations. Thorsten Sellin (1970) and more recently Smith and Fried (1974) have shown how the prison was not an American invention. Sellin went so far as to conclude: “The philosophy of the jail system was a British importation and the ‘penitentiary house’ of the Walnut Street Jail was no innovation. English reformers gave us both the fundamental ideas and their application in practice to such an extent that no Pennsylvanian can lay claim to be inventors of the ‘Pennsylvania System’” (1970: 14).

Sellin collected data to show how the ideas introduced in the Walnut Street Jail were already in operation in the reformed English jails, but he did not offer an explanation on why the Pennsylvanians adopted the system. Smith and Fried, in a brief chapter, argue that the prison reform was a product of “changing productive relationships that in turn required new justifications of both the state and the

law” (1974: 4). They suggest that the argument of humanitarian principles was invoked to legitimize the political basis for a new social order, and that the prison was designed to moderate the social conflicts resulting from the ascendancy of the bourgeoisie.

Thorsten Sellin in his book, *Pioneering in Criminology* (1944), invoked a similar argument to explain the emergence of the rasp house in mid-16th century Europe. The modifications that occurred in class relations, that is to say, the breakdown of feudalism and the rise of mercantilism and the change in the nature of labor relations, caused considerable dislocation among the workers, begging, wandering, idleness, and petty thievery, which led to the establishment of workhouses for “sturdy beggars” (pp. 9–22). The formulation by Sellin and by Smith and Fried is the point of origin for this article, to sketch out how and why the Walnut Street Jail became a prison.

The Early Jail and Workhouse

The first prison society, called the Philadelphia Society for Assisting Distressed Prisoners, was formed in 1776 following the work of Richard Wistar, a member of the Society of Friends, and is generally believed to be the parent organization of the Philadelphia Society for Alleviating the Miseries of Public Prisons, credited with the penal reforms introduced in the Walnut Street Jail. The first society apparently gathered food and clothing for the convicts and its activities centered about improving the physical comforts of the prisoners. When the British army entered the city of Philadelphia in September 1777, the organization was disbanded. During its brief existence there is no evidence to indicate that it effected any changes in the several jails, including the Walnut Street facility.

The work of Richard Wistar was apparently with prisoners lodged in the colonial workhouses (or houses of corrections). Although jails, designed for criminals, existed as early as 1635, their use as punishment was chosen relatively less often than fines or whippings for two reasons: the jails were small and could hold but a few at one time, and the cost of maintenance was a burden the colonial people wished to avoid (Powers, 1966: 234). It seems that colonial authorities were much more concerned with the discipline of laborers, servants, debtors, and political prisoners, housed in workhouses, which made its appearance sometime around 1655.

Jail sentences were short and most sentences were indefinite. One might be sentenced, for example, “for a time,” or “during the pleasure of the Court,” or “till Saturday morning next,” or “until the last day of the week at night.” If a criminal sentence of a servant such as to “years of imprisonment” proved to be prejudicial to his master, the court frequently modified the sentence and released the offender (*Ibid.*: 234–236). A servant in colonial America was not only one who gave personal household services, but was bonded to perform agricultural labor and other work for manorial lords, merchants, shippers, and plantation owners.

The workhouses began to appear with the establishment of a landed aristocracy,

the plantation owners in Virginia, the manorial lords in New York, and the merchant class and shippers in Massachusetts. The triangular trade of “rum, molasses, and slaves” transformed the industrial base, and one of the first signs of this was the adoption of a “money economy.” In 1652, the Massachusetts colony established a mint to coin the Pine Tree Shillings. The change to a money economy marked the beginnings of a wage-working class; the wages were fixed by law and the social position of laborers carefully defined (Simons, 1913: 39–40). These laws were elaborated to form a permanent class of practically hereditary working people.

In all the colonies laws were passed for the imprisonment of debtors. These laws were not directed at the poor, but applied to wage laborers, the purpose of which was to create a constant supply of subservient workers. Falling in debt because of misfortune or because of the extortions of landlord and tradesman, the worker was summarily dispatched to the workhouse and remained there until the imprisoned worker agreed to pledge oneself in servitude to the creditor (Myers, 1925: 64–65). In Pennsylvania, the laws provided the landlords the right to recover debts by seizure of the imprisoned debtor’s goods and chattels; the laws heaped further abuse upon the worker by authorizing the jailer to be a creditor to collect his “fees” (*Ibid.*: 65).

Originally, the workhouse was a separate facility constructed next to the jail, but as time went on imprisonment came to be increasingly reserved for the poor. William Penn’s *Great Laws* attempted to fuse the original distinction between the jail and the workhouse. It declared: “All prisons shall be workhouses for felons, vagrants, and loose, abusive and idle persons... (cited in Barnes, 1968: 56). But when the English laws were reinstated in 1718, they substituted for the imprisonment of criminals, restitution, fines and corporal punishment, and “where the offender proved not of ability to make such satisfaction then he should be kept in prison or a house of correction at hard labor...” (cited in *Ibid.*: 60). The distinction between a jail and workhouse became increasingly blurred, although the concept of a workhouse was retained under different names. In New York, they were called poorhouses for “vagabonds, beggars, idle persons, and those without manual crafts” (Myers, 1925: 61), while Pennsylvania in 1766 authorized the establishment of a house of employment for “rogues, vagabonds and other idle and dissolute persons” (*Ibid.*: 60–61).¹

The Walnut Street Jail, which concerns us here, was authorized by the act of February 26, 1773, to replace the High Street jail constructed shortly after the English laws of 1718 went into effect. The High Street jail consisted of two buildings, one for criminals, and the other for debtors, runaway apprentices, and the idle poor. The new Walnut Street facility was to be a “gaol, workhouse, and house of correction in the City of Philadelphia” (cited in *Ibid.*: 62). The new jail began to receive prisoners in January of 1776, and some 105 prisoners were moved to their new quarters from the old High Street facility. About the middle of the year, the prisoners were returned to the High Street jail, the new prison having been

requisitioned by the Continental Army for the confinement of captured enemies. It served as a military prison until 1784, including the period when the British army used it for the same purpose (Sellin, 1953: 326).

It would appear then that Richard Wistar and the Society of Friends in organizing the first prison society on February 7, 1776, worked in the Walnut Street Jail for only a brief period. Their main work was in the High Street facility, where the pillory and the whipping post were used as punishment for the criminals, while imprisonment was the mode of punishment in the workhouse.

The Society

Shortly after the end of the Revolutionary War, Benjamin Franklin, Benjamin Rush, William Bradford, and Caleb Lownes, led a movement to reform the English criminal code of 1718, which was still in effect. The new laws of September 15, 1786, called for the penalty of “hard labor, publicly and disgracefully imposed” (Barnes, 1968: 81; Lewis, 1967: 16–17). This meant that prisoners would be employed in “cleaning the streets of the city and repairing the roads” and authorities were “to shave the heads of the prisoners, and to distinguish them by infamous dress...and to encumber them with iron collars and chains, to which bomb shells would be attached....” (R. Vaux, cited in Barnes, 1968: 86).

The Philadelphia Society for Alleviating the Miseries of Public Prisons (hereafter referred to as the Society) was formed shortly after the new laws went into effect. Significantly, the Society’s first campaign, aside from introducing religious services in the Walnut Street Jail, was to amend the law. In January of 1788, the Society prepared a report noting “that the good ends thereby intended, have hereto been fully answered...” and recommended that “punishment by more private or even solitary labor, would more successfully tend to reclaim the unhappy objects....” (Vaux, cited in Barnes: 86–87). In the widely cited passage from Robert Vaux’s *Notices*, the justification for the law change was that public punishment “begot in the minds of the criminals and those who witnessed them, disrespect for the laws....” (cited in Barnes: 86; also Lewis, 1967: 18).

Why did powerful men like Benjamin Franklin and Benjamin Rush, signers of the Declaration of Independence, and William Bradford, later appointed to the Supreme Bench of Pennsylvania, call for a change in punishment to “hard labor, publicly and disgracefully imposed,” and then change their minds within one year to “punishment by more private or even solitary labor”? Existing works on the history of American penology generally assume that the Society was identical with the Society of Friends and conclude that Quaker beliefs were instrumental in early penal reform. As a matter of fact, no more than 136 out of 340 members from 1787 to 1830 were affiliated with the Society of Friends, and the president of the Society during the first 49 years of its existence was William White, Bishop of the Protestant Episcopal Church of Philadelphia (Barnes, 1968: 84). This does not mean that the ideas of William Penn and the Quakers in the 1780s did not have

some influence on the penal reforms, but it is important to note that when actual changes were introduced in the Walnut Street Jail, the Society was dominated by Episcopalians.

The work of the Society, as contrasted to Richard Wistar's earlier efforts, had nothing to do with alleviating the miseries of the prisoners. Instead, they worked closely with some members of the legislature, lobbying or issuing propaganda material, while the powerful remained in the background by not signing any of the Society's position papers. They nevertheless followed closely the activities of the Society, if not actually directing them. Benjamin Franklin then was the president of the Supreme Executive Council (the chief executive officer) of Pennsylvania and signed the message to the legislature containing the recommendations of the Society. This would suggest that during the early years of the Society's operations, it functioned pretty much like the modern presidential commissions on crime. The 37 charter members were prominent citizens of the community representing the major religious faiths, medicine, law, and commerce, and served to legitimize the idea of a *state prison*, which meant the creation of a state apparatus. To put it differently, the transformation that was to occur had implications far beyond the matter of penal reform. The political process toward creating a state prison system reflected in miniature the problems of the Confederation in *centralizing the powers of the state*. The demand for a strong centralized government was to guarantee the development of a new economic order on the one hand, and on the other, to solve the problem of law and order.

Revolutionary Times

The American Revolutionary War was not based upon mass popular support for national independence, and like most wars, it was fought by those who had the least interest in its outcome. For some members of the working class, conscious of their oppression, there was a sense of revolt, but it was a revolt against the tyranny of the manorial lords, the system of servitude, and the repressiveness of the laws. At times, it had broken out into uprisings, but they were quickly put down, and the leaders imprisoned or executed.

The war was supported by the merchant class and to get recruits, bounties were held out as inducements. In some instances paper money as high as \$750 to \$1,000 was paid out, and in others, land grants were offered. It is reported that "muscle men" were hired to terrorize and coerce the unwilling to volunteer (Myers, 1925: 73–134; Simons, 1913: 70–80). Pennsylvania adopted a Bill of Rights to inspire the masses and to win their support for the war. Clause I of this document asserted: "That all men are born equally free and independent, and have certain natural, inherent and inalienable rights, amongst which are...life and liberty, (and the) acquiring, possessing and protecting property...." In different ways the other colonies asserted the same principles.

In 1776, the ruling elites were all for paper money, restriction of the power

of the courts, natural rights, and the string of democratic principles espoused to promote the war. By 1786, they had rejected all of these principles.

As Louis Hacker (1970) puts it: "It was one thing to obtain peace abroad; it was another to assure the success of the Revolution at home." The years 1781 to 1789 were a critical period as the fledgling government was near collapse. It was the Constitution and the establishment of a strong central government that provided the political means for survival, stability, and future growth (*Ibid.*: 45). Up until then, the governing document was the Article of Confederation (a league of friendship among sovereign states), but it did not provide for a chief executive, a judiciary, or a taxing system to support and develop a central authority; it had no control over the money supply, it could not regulate domestic or interstate commerce, and it could not protect private property (*Ibid.*: 45–46).

The condition of the Confederation's finances had gone from bad to worse. It was aggravated by the arrears in unpaid interest, which had increased from 1784 to 1789 by about eight and one-half million dollars in the case of domestic debts and by nearly one and one-half million dollars in the case of foreign debts. The Continental currency, with which the government had paid for supplies and to soldiers, had become valueless, but new bills of credit (paper money) were issued in an attempt to add to the money supply. The financial crisis had a profound effect upon the working class.

The farmers experienced unusual distress. The crops had been good, and in many places the yield had been great. "Yet the farmer murmured, and not without cause, that their wheat and their corn were of no more use to them than so many bushels of stone.... That when they wanted clothes for their family, they were compelled to run from village to village to find a cobbler who would take wheat for shoes, and a trader who would give everlasting in exchange for pumpkins. Money became scarcer and scarcer every week. In the great towns the lack of it was severely felt" (McMaster, cited in Brooks, 1903: 74).

McMaster says of New Hampshire: "It was then the fashion, as indeed it was everywhere, to lock men up in jail the moment they were so unfortunate as to owe their fellows a six-pence or shilling. Had this law been rigorously executed in the autumn of 1785, it is probable that not far from two-thirds of the community would have been in prison" (cited in Simons, 1913: 86–87).

The courts attempted to force the collection of debts from those who had nothing, and increasingly the desperate poor focused their attacks upon the legislative and judicial systems. In Rhode Island, the debtors seized the legislature in an attempt to force legislation that would require creditors to accept the worthless paper money (Simons, 1913: 91). In some states people refusing to accept the paper money were subject to heavy fines and the loss of their rights as freemen (Wright, 1941: 236). But this only served to aggravate the situation as shops were closed, farmers refused to bring their produce to the cities, and creditors fled from the debtors. In North Carolina, the courts were shut down to protect the judges, who were denounced

and threatened for ordering the forfeiture of property for nonpayment of mortgage interest and for the jailing of debtors (Hacker, 1970: 50). But more than any other single event, the Shay's Rebellion in western Massachusetts alarmed the ruling class, when the local courts would not, or from intimidation feared to punish the dissidents. The Shayites directed their protests against the courts, disrupting their proceedings to prevent them from handing down indictments. Initially they directed their protests against the Court of Common Pleas on August 29, 1786, and extended their activities against the same court from convening in other counties. When a thousand demonstrators assembled at Springfield on September 26 to disrupt the proceedings of the Supreme Court, the militia was ordered out with a call for volunteers, but public sympathy was with the demonstrators. The federal government then attempted to enlist recruits, ostensibly to fight against the Indians, but this plan also failed. Finally, the wealthy merchants and bankers in Boston organized a mercenary army of 4,400 to put down the insurrection in January of 1787.

These events were reflections of the fiscal crisis and members of the ruling elite rapidly moved toward the establishment of a strong centralized government. In November 1786, Washington wrote to Madison warning that: "We are fast verging to anarchy and confusion.... Thirteen sovereignties pulling against each other, and all tugging at the federal head, will soon bring ruin on the whole" (cited in Hacker, 1970: 50–51). Madison, in February 1787, recognized the Confederation could not last unless some very strong props were applied to force respect for the government.

The success of the Revolution at home was brought about by the creation of a class-divided society based upon private property and the ratification of the new Constitution was to guarantee the privileges and power of the bourgeoisie. James Madison, who is said to be the father of the Constitution, made this very clear in one of his Federalist papers:

The diversity in the faculties of men, from which the rights of property flow, is not less an insuperable obstacle to a uniformity of interests. The protection of these faculties is the first object of government. From the protection of different and unequal faculties of acquiring property, the possession of different degrees and kinds of property immediately results; and from the influence of these on the sentiments and views of the respective proprietors, ensues a division of society into different interests and parties.... The most common and durable source of factions has been the various and unequal distribution of property. Those who hold and those who are without property have ever formed distinct interests in society.... A landed interest, a manufacturing interest, a mercantile interest, a moneyed interest, with many lesser interests, grow up of necessity in civilized nations and divide them into different classes.... The regulation of these various interfering interests forms the principal task of modern legislation,

and involves the spirit of party and faction in the necessary and ordinary operations of the government (Madison, 1961: 78–79).

Thus, Fisher Ames said in the first Congress: “I conceive, sir, that the present constitution was dictated by commercial necessity, more than any other cause. The want of an efficient government to secure the manufacturing interests, and to advance our commerce, was long seen by men of judgment, and pointed out by patriots solicitous to promote the general welfare” (cited in Simons, 1913: 88).

A State Prison Begins to Emerge

Pennsylvania’s new penal laws of September 15, 1786, of “hard labor, publicly and disgracefully imposed,” went into effect just about the time when mass rebellions were taking place in Massachusetts, Rhode Island, and North Carolina. The formation of the Society and its immediate efforts to change the laws came about because, rather than deterring “crime” among the masses, the prisoners at work in the city streets drew large crowds of sympathetic people. Friends and families of the prisoners made contact and at times liquor and other goodies were given to the prisoners (Sellin, 1953: 327). Robert Vaux, the chronicler of the Society’s work, said that the public spectacle of “fighting among the prisoners” was another reason for changing the laws. Rather than fighting among the prisoners, the fights referred to were undoubtedly public attacks upon the guards. The Society’s call for “punishment by more private and solitary labor” was to export out of public view the sufferings and degradation heaped upon the poor.

The Society’s report issued in January of 1788 to change the methods of punishment “caught” the attention of the legislature and, on November 20, 1788, it asked for specific detailed information and recommendations. The Society responded with its long memorial on December 15, 1788, in which it recommended the separation of criminals and debtors, and solitary confinement to hard labor.

Following the memorial, the legislature on March 27, 1789, adopted in principle the recommendations of the Society, but it still required additional legislation to put the ideas into practice. Most works on the origins of the American prison assumed on the basis of subsequent events that the recommendations of the Society were routinely accepted by the legislature, and by not examining the lobbying efforts of the Society, concluded erroneously that the changes were inventions of the Society and failed to see the political significance of the reform.

The Society prepared a propaganda pamphlet to influence the needed legislation. The contents of this pamphlet provide clear evidence that the origins of the reform were English. The pamphlet entitled, “Extracts and Remarks on the Subject of Punishment and Reformation of Criminals,” was designed “to make the minds of the assembly (legislature) more susceptible to the aims of the reformers” (Barnes, 1968: 91). The significance of this pamphlet is that it referred to the “successes” of the recently reformed English jails and what was being proposed for Pennsylvania

was the same model. The pamphlet cited the experiences at Wymondham, where imprisonment at hard labor was found to be profitable, and by providing hard labor for all on six days of every week the prisoners earned more than double the cost of their own maintenance. It noted that the English jails had developed separation for different types of offenders and sexes, as well as provisions for solitary confinement. The pamphlet declared that “exactly what was needed at home was to follow the English example” (*Ibid.*: 92).

In this connection, Barnes was reluctant to make any conclusions on the origins of the American prison, other than to acknowledge the influence of European developments. Sellin, as noted earlier, was quite adamant that the American prison was an import from England.

Sometime between January of 1787, when the Society called for an amendment of the law of September 15, 1786, and the long memorial issued on December 15, 1788, the idea of a *state prison* began to emerge in the minds of the Society’s members, and the key element in the reform package was the issue of solitary confinement to hard labor. The other reforms were simply dressed as humanitarian principles to persuade recalcitrant legislators. Sutherland (1939) was frankly puzzled by this early effort to establish a state prison. He believed that this was designed to obtain greater security for those sentenced to long terms, since the number of prisoners with long sentences was increasing because of the opposition to the death penalty (*Ibid.*: 413). Actually, the Walnut Street Jail, which came to be designated as the state prison, was a county jail no different from the other jails in each of the several counties. To designate this one county jail as a state prison goes beyond the question of penal management. Sutherland had failed to see the political significance of a state prison system.

The law of March 27, 1789, took the first hesitant step toward the creation of a state prison by providing that *any felon* convicted in any part of the state and sentenced to at least 12 months at hard labor *might be* sent to the Walnut Street facility. This did not mean that the Philadelphia jail would assume complete cost for the maintenance of the prisoner. The law also provided that the expenses of operating the prison would be defrayed by the counties in proportion to the number of prisoners from each county, and that Philadelphia was to receive 100 pounds annually for maintaining a state prison system, although expenses toward the county could be deducted by any proceeds received from prison labor.

The option to confine prisoners in the Philadelphia jail was initially left to the individual counties, but this option was rapidly closed. Following the lobbying efforts of the Society, the necessary law to implement solitary confinement was enacted on April 5, 1790. In this famous law, it provided for imprisonment at hard labor for the punishment of crime; directed the separation of witnesses and debtors from convicts; the segregation of sexes, and ordered the erection of a block of cells in the Walnut Street facility for solitary confinement of the “more hardened and atrocious offenders.”

The 1790 law ordering the imprisonment at hard labor for all, and the solitary confinement of the “more hardened and atrocious offenders,” placed the counties in the situation of having to undergo the expensive proposition of constructing cell blocks for solitary confinement and to enlarge their jails to confine all at hard labor, or to utilize the facility at Philadelphia and pay for the maintenance of the prisoner, as well as the 100 pounds per year assessment. The counties apparently balked. Commitments to the Philadelphia prison totaling 131 in 1789 had fallen by 1793 to 45, the lowest commitment figure in the decade 1789 to 1799 (Sellin, 1970, 13; Lewis, 1967: 29).

While the reduction in prison commitment was being hailed in some quarters as the direct result of the new prison to deter crime, the process of monopolizing the penal powers by the state was carried further to bring the counties into line. The law of April 22, 1794, directed that *all persons* in any county, convicted of any crime (except murder, a capital crime), should be sent to the Walnut Street Jail in Philadelphia. The punishment of solitary confinement was no longer reserved for the “more hardened and atrocious offenders”; it was to apply to all for a period of one-twelfth to one-half the term of imprisonment; and to provide flexibility to managing the prison, discretionary powers were granted to prison inspectors to determine the length of solitary confinement (Barnes, 1968: 116–117).

The Walnut Street Jail, as a state prison, came into existence when penal powers came to be monopolized by the state. The significance of a state prison and the adoption of the model in New York in 1796 and by other states was not so much the architectural design and the classification of prisoners, but the concept of a centralized state apparatus. Here, the issue is not the level of government operations, that is to say, a state versus a county-operated prison; it has to do with the establishment of a special public force with powers to exact revenue, to appoint officials with special privileges and power, and the right to use force to whatever degree is necessary.

Engels (1972), in his analysis on the origins of the state, said that a coercive state apparatus emerges in a society at a certain stage of development, a stage in which society has become entangled in an insoluble contradiction. The contradiction referred to by Engels is that so ably described by James Madison: the antagonisms from classes with conflicting economic interests. In the words of James Madison, the responsibility of the state is “to protect the different and unequal faculties of acquiring property.”

On one level, the idea of a state prison was to export out of view the contradictions of being poor in a society that professed certain inalienable rights. The new prison, as someone else noted, was a new form of penal colony; it banished the prisoner from one’s family and friends. No visitors were admitted except the inspectors, employed lawyers, and ministers. The isolation of the prisoners kept families and friends uninformed, isolated, and prevented their interaction from forming a potentially dangerous protest group. That the prison contained mostly debtors, servants,

and paupers is evidenced by a memorial issued by the Society in 1801. It called for additional reforms, this time the construction of another prison, the Arch Street Jail specifically for debtors. According to McMaster, the early American prisons contained debtors on a ratio of five to one (cited in Brooks, 1903: 87).

At another level, the establishment of a state prison took the initial steps to create a judicial system. It did this by taking away the discretionary powers of the judges by ordering the confinement of all prisoners, except capital cases, to the Philadelphia jail. For more than a century the judges acted arrogantly and often corruptly in sentencing the poor to the jails and workhouses. The reform of the judiciary, however, was not motivated by any sympathy for the poor. The royal judges, who served the interests of the manorial lords, validated titles obtained by fraud and corruption and usurped powers never granted to them, often voiding laws whenever it was convenient to do so. The ascendancy of the bourgeoisie required the establishment of a rational judicial system and curbing the discretionary powers and the capricious acts of the judges. This was accomplished by referring to the attacks upon the courts during the 1786 uprisings and the necessity to promote among the masses a respect for the laws.² That the architects of the state executed this feat by focusing upon the sentencing powers of the judges adds another dimension to the significance of the first state prison in the United States.

Rusche and Kirchheimer (1958) and Sellin (1944) understood the relations between the formation of the early workhouses and houses of corrections to the need for socially useful labor. In America, the turn of the 19th century was no exception. Nascent capitalists, with the establishment of woolen, cotton, and linen manufactories in Philadelphia, planned to employ the poor where a certain portion of the work could be done in their homes. The colonies then were largely agricultural and to assuage the apprehension of the great landholders that the factories would absorb men who were wanted as tillers of the soil, it was argued that “two-thirds of the labor will be carried on by those members of society who cannot be employed in agriculture, namely, women and children” (Niles, cited in Myers, 1925: 80–81). The conscription of women and children from the workhouses and houses of corrections, it was argued, would lower the cost of manufacturing cloth so as to make the products competitive with the British imports. That the severe laws against paupers and petty offenders were not changed can only be explained by the labor needs of the emerging commercial system.

Chronologically, the next major penal reform was the work of the New York Society for the Prevention of Pauperism. The organization was founded around 1816 and established the first separate juvenile institution in the United States, the House of Refuge. The members of the organization were mainly shippers and merchants, and it is no accident that the young boys committed to the House of Refuge were indentured out as cabin boys to America’s expanding fleet of clipper ships to contest Great Britain’s worldwide mercantilism.

Conclusion

We need to reexamine and to reinterpret the several penal reforms that came to be institutionalized. This includes the House of Refuge, probation, parole, the indeterminate sentence, the medical model, and the more recent reforms of diversion, methadone maintenance, probation subsidy, and community-based corrections. The studies in the sociology of law (Haskins, 1960; Hall, 1952; Chambliss, 1964) reveal how laws originate in response to modifications in the political economy to serve the purpose of legalizing and perpetuating the domination of one class over another. The aim of penal reform is the same. It needs to be appraised as concentrating the powers of the state, which reflects in the final analysis the oppression of class domination.

Professor Morris accused those that question reformist efforts as being “cop-outs.” In thinking about this, I thought of Professor Austin MacCormick, who was one of my early teachers as he was the mentor of William C. Nagel. Nagel’s *The New Red Barn* (1973) reminded me that Professor MacCormick did say that “it was people, not bricks and mortar, that made the good prison, and that given quality staff he could run a good prison in an old red barn” (p. 147). This, in turn, reminded me of Professor MacCormick’s early association with Thomas Mott Osborne, whose biography was written by the historian, Frank Tannenbaum, the same Tannenbaum I quoted at the beginning of this article. All of this is simply to indicate that the prison continues to remain a mystery and Professor MacCormick was incorrect. Nagel, in visiting the new red barns, had this to say:

The institutions were new and shiny, yet in all their finery they still seemed to harden everyone in them. Warm people enter the system wanting desperately to change it, but the problems they find are so enormous and the tasks so insurmountable that these warm people turn cold. In time they can no longer allow themselves to feel, to love, to care. To survive, they must become callous. The prison experience is corrosive for those who guard and those who are guarded (p. 148).

NOTES

1. It might be noted that juveniles were not initially confined in workhouses, but were bound out. As early as 1642, Massachusetts law decreed that unruly poor children were to be bound out for service. In 1720, it was further elaborated whereby all children of the poor, whether their parents received alms or not, and whose parents were. In the judgment of authorities, unable to maintain them, were to be bound out—male children until the age of 21, and the females until age 18.
2. See especially the writings of Alexander Hamilton in the *Federalist Papers*. The control of mass uprisings is a major theme.

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