Prison Labour: II [1]

The Employment of Prisoners

The employment of prisoners differs in many respects from that of free workers. The technical circumstances are usually different. The prisoner has often to accomplish with the most primitive appliances tasks for which the free worker has elaborate technical equipment at his command. It must also be remembered that as a rule prisons have not at their disposal such competent workers as employers in free industry.

Except in a few rare cases the prisoner works under compulsion. He cannot choose his employment as the free worker does, but must usually do whatever work is assigned to him. The conditions in which this work is carried out are fixed by unilateral decision of the State ; the prisoner has no voice in the matter and cannot as a rule appeal to the courts if he is the victim of injustice.

This rigorous subordination entails grave dangers for prisoners and eventually for their families. The prisoner is liable to an unjust exploitation of his working capacity, which may continue to handicap him after his period of detention is over. If he has dependants who cannot earn and are without means of support, the loss of working capacity of their breadwinner may place them in a very serious position.

In order to avoid these and similar dangers, the supreme power of the employer (in this case the State) should be limited. A suitable method is the passing of legislation binding not only the subject but also the State itself. All regulations concerning the protection of workers in prisons should as far as possible be given legislative form. Prison labour would thus be brought under the influence of that principle of general social policy which seeks to avoid arbitrary measures dictated solely by the will of officials.

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[1] For the first part of this article cf. *International Labour Review*, Vol. XXV, No. 3, March 1932, pp. 311-331.

One of the advantages of protective legislation for prisoners would be the settlement of the often obscure question of their remuneration. Sums earned by a prisoner could be credited to him under legal guarantee and a statement given him from time to time ; thus the danger of fraud would be avoided. Arrangements which are a matter of course for free labour would convince the prisoner that he too has inalienable rights. The more a prisoner is deprived of rights, the greater will be his hatred of a society which appears privileged as compared with him. For this reason a substitute for the free worker's protection by contract should be provided by the introduction of protection by legislation for prisoners.

There are also possibilities here for international regulation. Examples are given by the Berne Standard Minimum Rules [1], which demand the regulation by laws or decrees of certain points of prison administration. Labour conditions in prisons might surely also be regulated by measures of this kind.

The chief questions to be dealt with by international regulations for prison labour would be the means of production, the compulsion to work, working conditions, and assistance for discharged prisoners.

The Means of Production

There are considerable differences between the labour and the technical equipment at the disposal of prison production and of free industry.

(1) As regards age only, prisoners would seem to be as a whole potentially more productive than the average free population. Most prisoners are in the prime of life, the number of women is generally greatly inferior to that of men, and there are very few adolescents.

Despite these advantages, the average efficiency of prisoners is far below that of free workers. In drafting tenders for North American prisons the relation of the output of free workers to that of prisoners was taken as 5 : 4. In other countries the relation is still more unfavourable, and it must often be taken that two prisoners are needed to do the work of one free man.

The following are the reasons for this inferiority.

The health of prisoners is as a rule worse than that of free

[1] In particular Nos. 4, 33, 34 and 36.

workers. It is no exaggeration to say that at least one-third of them are not in good health. Some bring diseases with them from their former life. Many suffer in health as a result of imprisonment. The health of the prisoners who are regularly employed on outside work is the best.

In many cases the intellectual capacity of prisoners is on a lower level than that of free workers. Many of them have had little or no occupational training, and the proportion of illiterates is greater than in the outside world.

The psychology of prisoners is a further reason. Arrest and trial alone often have a dulling effect on them, and as a result the work, done under compulsion and often unfamiliar, progresses more slowly than that of a free worker. The amount of spoilt material, especially during the first part of the sentence, is sometimes very great.

(2) The difference between prison industry and free industry as regards technical equipment is even greater. One example will illustrate this.

In almost all States prisoners are employed on printing work. An enquiry carried out by the International Labour Office, in response to a request for information as to the machinery used for such work, elicited the following particulars :

Germany. The enquiry covered 18 prisons, in 16 of which printing was carried on, while in another the erection of a press was under consideration. In most of them flat-bed and platen presses were used. Power was rarely available, and everywhere composing was done by hand.

Danzig. In the spring of 1922 a printing works was set up in the prison despite the protests of the employers and workers in the industry. There are two flat-bed and two platen presses. A proposal to buy a composing machine was defeated in the Volkstag on the instigation of the employers and workers in the printing industry.

Hungary. The national prison at Vácz has a printing works with modern equipment. Power has been used since 1898. There are 9 flat-bed presses and one platen press ; there is no rotary machine.

Japan. Printing was done in 42 prisons ; there were in all 222 presses, 64 of which were power-driven and 158 worked by hand or treadle.

These examples show that the technical equipment of prison industry is far behind that of free industry. From the educative point of view this is regrettable, for the prisoner cannot easily utilise in ordinary industry the skill he has gained in prison if he does not know the methods in current use outside. On the other hand, free industry insists that the technical equipment in prisons should not be brought up to date, as the example of Danzig shows.

There are, however, almost certainly ways of reconciling these conflicting interests. As we have already seen, the basis of the complaints of free industry is not so much that work is done in prisons but rather that the work is done under more favourable commercial conditions than its own. A way of avoiding this last difficutly would be for the prison authorities to raise capital in the open market for the acquisition of up-to-date equipment, and for the State to authorise them to do so. They would then have to include interest and amortisation charges in the price of their goods. The result would be to bring the prices of prison products nearer to the level of ordinary industrial prices, at least as far as they are determined by technical equipment. To this extent there would then be no further question of unfair competition.

Compulsion to Work and the Right to Work

The modern prison system attacks the causes of crime through the mentality of the criminal. As employment on useful and educative work is one of the means to this end it is intelligible that legislation should prescribe the obligation to work as part of the penalty of imprisonment.

Compulsion to Work.

Existing legislation [1] makes a distinction between absolute and qualified compulsion to work. Under the former the prisoner must carry out any work assigned to him ; under the latter, the obligation is limited to work corresponding to his strength and ability. Severe sentences *(Zuchthaus, travaux forcés, ergastolo)* entail absolute compulsion, less severe sentences

[1] For the principles on which future legislation on this subject should be based, cf. E. BOSSHARD : *Die Arbeitspflicht der Gefangenen nach Schweizer Recht*, pp. 58 et seq. Zurich, 1930.

(Gefängnis, emprisonnement, arresto) qualified compulsion. This distinction is found in the legislations of Germany, France, and Italy.

It may be asked whether such a distinction is practicable. It is probably much more difficult to influence for good a person guilty of a serious crime than one who is guilty only of a minor offence. If the former is put to any sort of work regardless of his strength and ability, the exercise of a good influence will be practically impossible. In the second case such considerations are perhaps not called for.

The Standard Minimum Rules of the Berne Commission[1] contain a provision that attention should be paid to the physical and intellectual capacity and former occupation of all prisoners. The adoption of such a provision would be a notable step forward.

The Right to Work.

While the present laws of most countries oblige prisoners to work, only a few provide that they have the right to do so. Even the Standard Minimum Rules of the Berne Commission do not recognise a general right of this kind ; the first paragraph of No. 9 only states that prisoners so sentenced as to be bound to work should always be supplied with work.

The question whether a prisoner should be given the right to work is of the greatest social importance. If on his discharge he is no longer of full working capacity, it will be difficult if not impossible for him to regain a place in society. The best method of maintaining a prisoner's working capacity is to employ him on useful work. The idea that work for prisoners is in all circumstances an evil is a survival from the days when the object of the sentence was to extirpate the criminal from society. Not until it is understood that work is a beneficial distraction for the prisoner will the right to work be recognised. The recognition of this right is an urgent social necessity.

It may be added that even where the law does not explicitly give the prisoner the right to work, the existence of this right is often inferred by penologists as a consequence of the State's responsibility for the prisoner's welfare. The insertion in inter-

[1] No. 10, second paragraph.

national regulations on the treatment of prisoners of a clause recognising this right would therefore certainly be welcomed by experts in penology.

Compulsion to Work without Imprisonment.

In addition to the penalty of imprisonment with compulsory or voluntary labour some legislations provide for a system of penal labour without imprisonment. As the effects of this form of labour on free labour may be similar to those of prison labour, it too calls for consideration from the social point of view.

Penal labour without imprisonment was introduced in Russia soon after the Revolution. Persons sentenced to it have to work in a specified undertaking for a period fixed by the court (not more than a year). Outside working hours they are free. If the convict is already in employment, he may keep his position but must pay 25 per cent. of his wages to the Penal Labour Authorities.

In the last case the effect of the sentence is much the same as that of a fine. The system then resembles the German system [1] under which the penal authorities may allow persons sentenced to fines to work them off in labour instead of money.

This system deserves mention here because it raises the important question whether protective labour legislation should apply to work so done. On the whole opinion is in the negative, thus indicating that there is a basic difference between free labour and even the mildest form of penal labour.

Working Conditions and Protection of Workers

The conditions in which a prisoner works are regulated not by a civil contract, as are those of a free worker, but by the decision of a public authority. Certain basic differences between the two kinds of labour proceed from this fact.

(1) The prisoner's working conditions are regulated not by the provisions of private law on the hire of services, but by public law. It follows that the prisoner is usually unable to appeal to the ordinary courts, or to a labour court if one exists. His legal position is therefore inferior to that of the free worker,

[1] Federal Criminal Code, section 28 *bis*.

even when special penal legislation has accorded him certain privileges.

(2) The prisoner's working conditions are fixed without consulting him. He has absolutely no voice in deciding the hours, quantity of work (quota or daily task), or rate of payment. These conditions are fixed by the State, so that there is no need to distinguish, as in free industry, between labour conditions and labour protection. Questions of remuneration, hours, quantity of work, protection against accidents, vocational and other education, and the protection of certain classes of prisoners can therefore be considered in a uniform manner, since they have the same legal origin.

The Payment of Prisoners.

The compulsory nature of prison work is clearly reflected by the treatment of the question of payment. The prisoner is ordinarily obliged to work, but has no legal claim to payment for the work done. Some States not merely do not recognise such a claim, but make no payment of any kind.

In penological science it has been pointed out that for prisoners' work there can be no question of wages, as the necessary condition for a claim to wages—a contract—does not exist. But it should be remembered that claims against the State can be made in respect of other forms of obligatory work which are not based on contracts. A soldier or any member of the community who is under an obligation to serve the public has a claim to payment or compensation for his services, even without the existence of a contract.

There are also instances of the absence of a contract in free employment. In social insurance law a worker's claim and an employer's obligation are often founded solely on *de facto* employment. In Germany, for instance, both the Federal Sickness Insurance Code and the Works Councils Act recognise and specifically provide for the case of employment not depending on a contract.

It cannot therefore be maintained that the prisoner can have no claim to payment because he has no contract with his employer (the State).

The reasons in favour of making some payment to prisoners for their work are numerous. The more their position differs from that of a free citizen, the more difficult will be the task of

making them useful members of society. It is, for instance, difficult to teach prisoners to respect the existing system of private property if they are themselves excluded from it, as would be the case if they were compelled to work with no claim to payment.

As a German jurist [1] said in the course of an international study of the subject, " in settling the problem of payment we must not forget that the neglected are the very people who need to be made to realise the value of regular work. Only a rigorist out of all touch with reality would require of prisoners the self-sacrifice of doing their duty without payment in a world of paid labour. "

The lack of a legally assured payment is still less intelligible from the standpoint of the families of prisoners who are dependent on them for support. In the absence of payment such persons suffer more from the sentence than does the criminal himself, for in prison his primary needs at least are satisfied. This infliction of suffering on persons who have had no share in the crime runs counter to modern penology ; but it is inevitable if they are deprived of their livelihood by their bread-winner's inability to earn. Such anti-social results of the penal system may be avoided if the convict can earn what is needed to keep his family while in prison.

A further consideration is that the injury caused by the crime can more easily be made good if the prisoner has some earnings.

Some other circumstances are also in favour of the payment of prisoners for the work they do.

So long as labour conditions in prisons are fundamentally different from those in free industry, complaints of unfair competition will continue to be heard. The principal reason for asserting that the State is in a position to put its prison products on the market at lower prices than free industry is that the State pays either no wages or lower rates than its rivals. The resulting opposition in industrial circles to prison labour may well be such as seriously to discredit the application of the penal system.

The following is a summary of existing legislation on the subject.

(1) In some States no payment is made for work done by prisoners. An instance of this is England, where a system by

[1] GRÜNHUT : "Gefangenenarbeit", in *Handwörterbuch der Staatswissenschaften*, 4th edition, Vol. II, p. 663.

which convicts sentenced to long terms could earn a " gratuity " was abolished in 1922.[1]

(2) Other countries provide payment for work done, without the prisoners having any legal claim to it. These systems may be classified as follows :

(*a*) The law leaves it to the discretion of the prison authorities whether the prisoner shall be paid or not. This is the case, for instance, in some of the Swiss Cantons.[2]

(*b*) The law makes payment obligatory but states at the same time that the prisoner has no legal claim to payment. This is the system in Germany.[3]

(*c*) The prisoner has no legal right to have wages credited to him, but the law provides that once such a credit entry has been made the sum is the prisoner's property and he has a legal title to it. This is the system in France. This system is improved if the prisoner has the right to validate his claim to be paid the sum credited to him in the courts—as, for instance, in Poland.[4] The German Penal Administration Bill of 1927 contains a similar proposal.[5]

(3) In a minority of States the law explicitly accords prisoners a legal right to payment. The new Italian Penal Code, which came into force on 1 July 1931, is the most important example. Section 145 of this Code provides that prisoners shall be paid for work done. Section 213 contains a similar provision for work done by persons under detention for reasons of public safety (in reformatories, on preventive detention, etc.). The prisoner is thus given a legal right to payment, for there is no provision, as in the German law, that the State is obliged to pay, but that the prisoner has no legal claim to payment.

The Penal Code of the U.S.S.R. goes even further than the new Italian Code by giving prisoners the right to sue the State for sums due to them.

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[1] Cf. Statutory Rules and Orders, 1905, No. 75, p. 396, and 1922, No. 630, p. 896. A system of wages has since been introduced in two prisons as an experiment; prisoners in custody before trial are also an exception.

[2] GUGGENHEIM : *Zur Frage des Arbeitsertrages im Straf- und Sicherungsvollzug*, pp. 38 et seq.

[3] " Principles for the treatment of prisoners ", section 79 (2).

[4] Order of the President of the Republic No. 29 of 7 March 1928.

[5] Section 84 (3).

Even in States where prisoners have a more or less guaranteed claim to payment for work done, this payment differs in many respects from the wages of a free worker.

The greatest difference is in the method of calculation. The prisoner's wage is based as a rule on his production ; he receives a certain percentage of the value he has produced. This percentage varies as a rule between 5 and 50 per cent. The French system, which enables the prisoner to earn up to 70 per cent. of the value of his work, is an exception favourable to the prisoner, though such a rate is only paid subject to special conditions—good conduct and hard work. In Japan, where there is a similar system of remuneration, 18,365 yen were paid in one year for 200,408 hours' work. In Germany (Hamburg) in 1925 the daily wage of a specially skilled worker in the highest class was 45 R.Pf.[1] In Australia (Queensland) the maximum payment for prisoners is a shilling per day ; this maximum can only be reached by specially skilled workers serving an indeterminate sentence. These data are enough to show that the rates of payment for prison labour are lower than those for free labour.

In most cases rates are fixed by regulations issued by the prison authorities for the individual prison. The Penal Code of the U.S.S.R. is an exception, for prison wage rates in that country are fixed by agreement with the Commissariat of Labour, with the object of preventing any arbitrary fixing of rates by the prison authorities. A similar purpose is met by a clause of the Prussian Order of 7 June 1929 on the progressive system of prison administration, providing that prisoners who have spent six months in an intermediate prison may be allowed to go and work for a free employer outside the prison if the employer is willing to pay for the prisoner's work at the rate fixed by collective agreement for his particular branch of industry. The wage is not, however, paid directly to the prisoner, but to the prison, which disposes of it according to the regulations.

The prisoner, in fact, unlike the free worker, cannot as a rule dispose as he pleases of the whole of his earnings. There are many provisions determining in advance the use to be made of part of the payment.

One of the principal considerations here is that the prisoner shall help to make good the injury caused by his crime. Latin-

[1] GRÜNHUT : *loc. cit.*, p. 675.

American law (Venezuela, Argentina, Mexico) was the first to embody this principle, which has since made its way into European law. The new Italian Code, for instance, provides that compensation for the injury caused shall be the first charge on the prisoner's earnings ; the Belgian and Finnish laws provide that the prisoner's earnings may be applied to this purpose.

Besides provisions of this kind, the law often provides that part of the prisoner's earnings shall go to cover the costs of his imprisonment ; e.g. the new Italian Code (section 145), which also provides that the costs of the criminal proceedings shall be defrayed from the same source.

Part of the prisoner's earnings is also as a rule applied to the constitution of a fund to facilitate his return to the outside world. This idea was first put into practice in the Amsterdam prisons at the beginning of the seventeenth century, and was subsequently adopted at Ghent, where the prison was described as exemplary by Howard in 1776. In almost all countries which adopt this principle part of the prisoner's earnings may be handed over to his dependants (Austria, Belgium, Finland, Germany, Mexico, Norway, Sweden, etc.). In Australia (Victoria) a prisoner is obliged by disciplinary measures to maintain the members of his family.[1]

The remainder of his earnings is paid direct to the prisoner, provided his conduct has been satisfactory. According to the laws of some States he may buy extra food, tools to provide occupation for his spare time, books and other useful articles. Such privileges, which are granted only when the greater part of the sentence has been served, are intended to accustom the prisoner little by little to freedom. The more severe the discipline imposed on the prisoner, the more liable will he be to indulge in all available excesses as soon as he is free. Further, the danger of the dulling effect of confinement will be diminished if he can use part of his earnings to better his position.

All these socially beneficent measures are possible only where payment is made for work done in prisons. The more securely these payments are guaranteed by law, and the more they approach the level of the wages paid to free workers, the more efficient will such measures be.

In view of all these considerations there are strong social reasons for prescribing general and obligatory payment for work

[1] Gaols Act, 1928, section 34.

done in prisons. The Minimum Standard Rules of the Berne Commission have no such provision. In contrast to all the other provisions dealing with labour, that dealing with wages (No. 13) contains only a recommendation, and not a rule that should definitely be observed.

Hours and Quantity of Work.

The regulation of working hours in prisons cannot easily be compared with the same question in free industry. A single example will suffice to illustrate this.

Sufficient spare time is of the greatest importance for the free worker. It enables him to satisfy his own economic needs, to attend to his family, and to indulge his intellectual and sporting interests. As a rule the prisoner enjoys no such opportunities, and spare time may add to the severity of his sentence. Most of it must be passed in his cell. Only a minority possess sufficient education to engage in independent intellectual activities. When the few " thrillers " in the prison library have been read—and stringent rules take care that they do not circulate too freely—the slow hours linger and the prisoner feels only too keenly what it means to lose his freedom.

The significance of spare time for prisoners is very plainly shown by the Code of Penal Administration (section 24) of the Canton of Aargau (Switzerland), in which suspension from work is provided as a disciplinary punishment. If suspension from work is a punishment, it follows that inversely it is a benefit to allow the prisoner to do a full day's work. For this reason it is perhaps in the interest of prisoners to fix a minimum working day for them, as is done, for instance, by the Czechoslovak law.

The regular duration of work varies from State to State. The data at present available do not permit an international comparison ; they are not even comparable among themselves, for the same meaning is not everywhere attached to the word " work ". Some prison authorities count as work the prisoner's whole day, from reveillé to lights-out, so including all cleaning work, exercise, instruction, appearances in court, and interrogation (Japan); others reckon what would be considered " work " in free industry (Swiss Cantons). It is not therefore surprising that the figures given for the hours of work of prisoners vary between seven and twelve hours a day. In most cases the maximum

working day for prisoners is one or two hours longer than the normal working day for free workers. In England, for instance, the maximum working day for prisoners is ten hours.

Even if it is accepted that spare time is an evil for the average prisoner, this should by no means be made a reason for overloading him with employment. Such a practice would have undesirable effects from two points of view. It would lead to an unjust exploitation of the prisoner's working capacity and would injure his health ; and it would tend to intensify the competition of prison labour with free labour.

It is therefore advisable—for the last reason in particular—to limit the actual industrial employment of prisoners to the hours usual in free industry. But in order also to curtail spare time in accordance with the aims of the penal system, the prisoners should be given some other occupation outside working hours in the strict sense. Modern penology considers the development of vocational, civic, and general education, additional outdoor exercise (with permission to indulge in sports, games, and music), and other measures as suitable ways of making imprisonment really effective without endangering the material interests of free industry or the moral interests of the prisoners.

The existing legislation on hours of work falls into two groups :

(1) In many countries the length of the working day varies with the nature of the sentence. In Germany, for instance, this is the case under the present Penal Code, and there was a similar provision in the Bill of 1927. The idea lying behind this provision is that work is an evil which makes imprisonment even more unpleasant ; severe sentences are therefore to be accompanied by longer hours of work and less serious sentences by shorter hours. This is in direct contrast to the provision of the Swiss Canton of Aargau mentioned above.

(2) In most other countries hours of work are the same for all prisoners, except that in principle those for women are shorter than those for men. Such systems do not as a rule enable the abilities and physical capacities of individual prisoners to be taken into account (Switzerland, nearly all prison regulations).

The Minimum Standard Rules of the Berne Commission (No. 12) require the fixing of a maximum working day, which may vary

with the different categories of prisoners. The systems mentioned under (1) and (2) would thus both be permissible.

This method of regulating hours of work leaves open the question whether the nature of the work shall be taken into account. The demands made on the prisoner's physical and mental capacities vary according as the work to be done is easy or difficult. Should hours of work be the same for all prisoners in a given category, when one is making cardboard boxes and another is working underground in a mine ?

Such a result would not be desirable ; the nature of the work, as well as the category of prisoner, should therefore be taken into account in fixing the maximum working day spoken of in Rule No. 12.

The Minimum Standard Rules speak only of hours of daily work. Many prison regulations provide for the cessation of work on Sundays and holidays. No. 27 of the Minimum Standard Rules provides that every prisoner should have the opportunity of satisfying the needs of his religious life. This to some extent involves the cessation of work on religious festivals.

The question of rest days, however, as the social legislation of all States recognises, is not only a matter of religious observance but also a necessity of industrial health. It therefore seems desirable to include a provision on weekly rest as well as on hours of work in any international regulations on the treatment of prisoners. Time tables such as are prescribed in the prisons in Queensland (Australia) facilitate the application of provisions for daily and weekly rest. [1]

The Minimum Standard Rules contain no provision on the quantity of work to be done (the daily task or quota). This arrangement is so common that it calls for separate consideration.

The daily task is first mentioned in the Amsterdam prison regulations in the sixteenth and seventeenth centuries ; from there it has spread over the whole of Europe. The system was often regarded as one of the most important conditions of a reformative prison system. Modern times are somewhat sceptical about it.

The task system consists in the assignment by law or by prison regulations of a certain daily or weekly quota fixed in advance for each prisoner. The base on which this compulsory

[1] Queensland, Prison Act, 1890.

task is calculated varies ; often the output of free workers is taken as a criterion. The German " Principles for the treatment of prisoners " of 1923 [1] state that " the quota is to be based on the average output of a healthy prisoner acquainted with the work ".

Another method is to base the quota on the physical and mental capacities of the individual prisoner, with the object of avoiding stereotyped treatment. In many prisons a quota is fixed only if the prisoner makes it necessary by his laziness (Canton of Vaud, in Switzerland).

Failure to complete the quota entails disciplinary punishment.

The following remarks may be made about the system, whatever the method used to fix the quota and whatever the conditions on which this fixing depends.

If the prison regulations prescribe that a prisoner has to perform a certain task in a day—e.g. to cut 1,500 corks by hand or 4,500 by machine, prepare a pair of boots for sewing, sew two or two-and-a-half canvas jackets, etc.—and if failure through his own fault to complete the quota entails punishment, it is obvious that careless work will help the beginner or the unskilful worker to complete his task. If this happens on a large scale, the complaints of free industry that the market is being flooded with low-class goods cannot be regarded as totally unfounded.

Another point which should be borne in mind is that the hardened jailbird, who knows all the ins and outs of prison labour, perhaps receives a special reward for full measure or extra work, while the intellectual worker—sentenced maybe for his opinions—is liable to punishment for lack of the necessary manual skill. The quota system is especially dangerous when it is accompanied by a bonus system in which the overseer receives a special reward if the daily task is regularly completed during a given period. He has therefore an interest in driving the prisoners to do as much work as possible. This may lead to abuse, especially when old, youthful, or ailing prisoners are exploited.

Lastly, while theoretical attacks on the quota system are numerous, it must be pointed out that persons with practical experience of prison administration have often spoken highly in its favour. Statements made by prisoners, too, provide evidence that the system helps to make them work with more alacrity.

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[1] Section 74 (2).

Safety and Health.

The reformative prison system cannot be expected to have good results unless the arrangements for work in prisons are organised on the model of free labour (Standard Minimum Rules, No. 11, first paragraph). If this principle is applied prison labour will be exposed to exactly the same physical and moral risks as free labour ; similar protective measures should therefore be instituted on their behalf.

This holds good without restriction so far as concerns the prevention of industrial risks arising out of the premises and working appliances used. The same general hygienic conditions (minimum height and minimum cubic air space of workshops, cleanliness, lighting, ventilation) should therefore be required as for free labour. This is so also as regards compliance with safety regulations necessitated by the working processes used (e.g. removal of dust and waste, elimination of fumes, and other measures for the protection of health). Where the processes employed require it, prisoners should be supplied with the necessary protective clothing.

The rules for the organisation of work in prisons should not differ too much from those in free industry. In some directions, however, prison labour requires special regulations.

From the remarks made on the kind of labour found in prisons, it follows that health conditions are worse in prisons than in free industry. The medical supervision of prisoners, especially those engaged in dangerous or unhealthy work, should therefore be stricter than in free industry.

The subordination of workers to the supervisory staff and the works management is much greater in prison than elsewhere. There will always be cases of abuse of authority by supervisory officials. The danger of such abuses will be greatly increased if these officials have the right or even the possibility of consuming alcoholic beverages during or just before their turn of duty. It is to be noted that while as a general rule ordinary works regulations formally prohibit the consumption of alcohol during working hours, prison regulations are often silent on the subject.

Prisoners, on the other hand, seem to be everywhere forbidden to consume alcoholic beverages during working hours. But accounts of incidents in former years under the system of contract labour show that this point should not be ignored, for

there have been cases of prisoners being incited to work by alcohol behind the backs of the prison authorities.

Closely connected with the question of the consumption of alcohol is that of the maintenance of decency and good morals in prisons. The danger of contamination by corrupt companions is greater than in free industry. The new Italian Penal Code prescribes individual treatment for prisoners, varying with the extent to which they are a danger to society. This is a matter on which prison regulations ought to contain detailed provisions. The separation of prisoners by sex and age is indispensable but not sufficient. Previous good conduct, too, is not an infallible criterion for the classification of prisoners, especially when it is based merely on the absence of previous convictions.

Would it not be preferable to group prisoners in accordance with the results of direct observation during imprisonment? True, the success of this method depends upon the judgment and tact of the governor of the prison. But the Standard Minimum Rules (No. 43) require prison staff to be chosen with the greatest care. And if the staff is competent and specially trained, it will always be guided by the principle that the prison system must be based on the direct observation of the prisoners and not on a study of previous breaches of the law.

In addition to the steps taken to counteract the dangers inherent in prison life, the prison system also makes provision for curative measures. In spite of strict compliance with all existing safety regulations, accidents will and do happen. Whose duty is it then to look after the injured and especially the disabled prisoner when he is discharged from prison? How can the livelihood and education of his dependants be guaranteed? Questions of this kind first arose in countries which early introduced accident insurance schemes. These applied to all workers with the exception of prisoners.

To remedy this defect, a Prisoners' Accident Assistance Act was passed in Germany in 1900. Under this Act prisoners or their dependants are entitled in case of an industrial accident to claim an invalidity pension or survivor's indemnity by the procedure laid down for administrative disputes.

In some countries prisoners are covered by compulsory accident insurance. For example, the Hungarian Act of 3 August 1927 brings within the scope of accident insurance all "undertakings employing persons detained in a reformatory or in a house

of detention and the said detained persons ". The regulations for the insurance of prisoners are the same as those for free workers. Poland also has similar provisions.

Persons sentenced to longer or shorter terms of imprisonment have often, at the time of their admission to prison, already acquired certain rights in respect of insurance benefits in the future, and in particular old-age pensions. In order to maintain these rights they have to pay regular contributions. The German " Principles for the treatment of prisoners " provide that the prisoner must make these payments out of his own resources How, then, is a prisoner to maintain his insurance rights if he has not the necessary means and if the money he earns in prison is insufficient to cover his contributions ?

An Order issued by the Prussian Ministry of Justice solves this problem by providing that on his admission to prison each prisoner is asked whether he desires to maintain his insurance rights ; if he does, the State pays the necessary contributions on his behalf during his whole period of imprisonment.

Vocational and General Education.

In free industry compulsory education, either vocational or general, is as a rule justifiable only in the case of young persons. In the case of prisoners, however, the obligation is applied to persons of all ages. The Standard Minimum Rules of the Berne Commission therefore provide for a system of education varying for different categories of prisoners.

No. 10 of the Rules states (first paragraph) that for all prisoners the work should be instructive and of a nature which may enable them to earn their livelihood after liberation. For young prisoners it is further specified (third paragraph) that they should as far as possible be taught a trade.

No. 28 similarly provides (second paragraph) that all young prisoners should receive instruction appropriate to their age, and (first paragraph) that prisoners undergoing sufficiently long sentences should receive suitable intellectual instruction.

In applying such a system it should be remembered that the real aim of the prison system is to influence the prisoner's personality as a whole. Vocational training should not be confined to teaching the workers mere manual processes, nor intellectual instruction to learning by rote. Attention should

rather be called to the relations between these two branches of instruction. Vocational training and general education should go hand in hand.

The objection has often been raised that prison instruction with the further knowledge it gives enables the criminal to commit future crimes with greater skill. Such a charge might be justified if this instruction were limited to giving the prisoners some degree of dexterity without at the same time aiming at any transformation of their moral outlook.

There is no lack of practical proposals for the improvement of vocational training in prisons. The preparatory studies carried out in Belgium may be specially mentioned here. A report by Mr. Omer Buyse, Director of Technical Education and Fine Art in Brussels, issued in 1920, proposes that prison labour should be divided into three groups with a view to improving the vocational training of prisoners.

The first group should consist of unskilled workers who are only fit to be employed on the simplest tasks. The work would be of a kind needing a very short training, e.g. making bags, baskets, or simple articles of wood, metal, or other materials.

The second group should consist of prisoners at least 21 years of age, sentenced to long terms, who have learnt a trade before entering the prison. The work of this category of prisoners should be organised essentially on a commercial basis—that is to say, the cost of detention should be covered.

The third group should consist of prisoners under 21 years of age ; this would form the real vocational school of the prison. The idea in view is the establishment of a prison continuation school for general and vocational subjects, in which the prisoners would receive careful training with a view to their rehabilitation. It is suggested that the prison school should be divided into seven classes for men and two for women, in each of which a special trade would be taught.

A special credit was voted by the Belgian Chamber in 1930 for putting this scheme into operation.

Protection of Special Categories of Prisoners.

The special obligations imposed on employers for the protection of women and young persons are also applicable to prison labour.

The protection of women calls for special attention, as experience shows that women find imprisonment harder to bear than men. For instance, women prisoners lose more weight than men, are more often ill, are less inclined to work, and refuse food more often.[1] The question arises how far these effects can be avoided by a suitable organisation of prison work.

Another widely discussed question is whether the organisation of prison work on a commercial basis requires the presence of men in the management of female prisons. An international enquiry might throw considerable light on this point. The Standard Minimum Rules (No. 50, second paragraph) assume that the governor of a female prison will ordinarily be a man. An enquiry into actual conditions might perhaps show that the organisation of prison work does not make this rule indispensable.[2]

In modern legislation there is an increasing tendency to restrict the application of the penalty of imprisonment where young persons are concerned. This shows that imprisonment is held to have particularly disastrous effects for them and justifies special regulations in their case.

In the prisons of all countries arrangements have to be made for a certain number of elderly persons. This is explained partly by the existence of life sentences, and partly by the fact that with advancing age the power of discerning between right and wrong and the power of self-control usually become weaker.

As the penal laws of most countries make allowance for these circumstances the prison system cannot ignore them. They also have their importance for prison labour, for obviously there can as a rule be no question of providing instructive work for these persons.

When the Standard Minimum Rules were being drafted, the International Prison Commission did not include any special provisions for elderly persons.[3] If this omission is rectified, special regulations for the work of these persons should not be forgotten, for in most cases they can be employed only on simple and light work which entails little fatigue either physical or mental.

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[1] SEUTTER, *op. cit.*, pp. 93 et seq.

[2] It may be mentioned that Spain has recently appointed a woman to the post of General Director of Prisons.

[3] ROUX : *op. cit.*, p. 7.

Right of Complaint and Supervision.

All regulations concerning prison labour are of little practical worth to the prisoner unless they are accompanied by legal remedies which the prisoner can himself bring into operation. The necessity for a legal right of appeal is enhanced by the fact that discipline among prisoners is maintained by means of supplementary punishment. Examples are corporal punishment (which is still common), reduced food, confinement in dark cells, deprivation of bed and bedding, prohibition of reading and correspondence, etc.

It follows from the nature of a prison that a prisoner cannot appeal to outside persons or institutions unless the regulations contain explicit provision to that effect.

A brief account may be given of the measures adopted to protect prisoners in this respect. Almost everywhere the prisoner can appeal direct to the governor of the prison without special formality. In some cases he may also complain to the superior authorities; as a rule, however, these are under no legal obligation to investigate the complaint. The fact that prisoners are in some cases still liable to disciplinary punishment for making "frivolous complaints" (i.e. complaints that are found to be unjustified) shows how precarious their legal rights may be.

An example of a specially well constructed system for dealing with complaints is that in force in the prison of St. Antoine at Geneva. There each prisoner has the right at any time to submit his requests and complaints to the governor of the prison. The prison official, who visits the prisoners twice daily, must inform the governor of a prisoner's intention to do so. The prisoner may also, without reference to the governor, apply directly to a judge or to the police authorities. In this case he may seal his complaint, which the governor has to transmit unopened and without delay to the competent authority.

As regards the risks incurred by prisoners in the course of their work, it might perhaps be advisable to include factory inspectors among the authorities entitled to examine complaints. In addition to dealing with complaints, the factory inspectors should also be required to carry out official periodical inspections of the technical equipment of prison workshops.

In England prison "factories" are within the scope of factory inspection: the Factory Acts provide that prisons in which machinery is used must be regularly inspected by the factory

inspectors. While no definite information on this point is available for other countries, it seems reasonable to suggest that provisions of this kind might well be inserted in international regulations on the treatment of prisoners.

Assistance for Discharged Prisoners

The employment of prisoners on useful work is intended to help towards their rehabilitation. This aim is not achieved unless the prisoner on his discharge finds suitable and adequately paid work. If he relapses into idleness, the reformative influence of prison work is soon lost. When he has exhausted any savings he has been able to make in prison, he runs the risk of falling back into crime. The question of the assistance of liberated prisoners (Standard Minimum Rules, Nos. 54 and 55) is thus in the first instance a matter of helping them to obtain work.

How then is the discharged prisoner to find employment? The longer he has been in prison, the greater the probability that all contact with friends and with his former trade has been lost. He finds himself among strangers and does not know where to turn. As a rule all his efforts to find work fail, for there are not many employers who are ready to employ an ex-prisoner. Even if he does find work, he is often paid at lower rates than his fellow-workers.[1] He feels that he is an outcast and this engenders in him a dangerous hatred of society; the least provocation may lead to a new crime. This is no mere theoretical description but represents the experience of every prisoner who has served a long term of imprisonment.

Certain measures are necessary to prevent such situations from arising.

(1) Steps must be taken to preserve the links uniting the prisoner to the outside world and especially to his trade. This, however, is not always possible, for in many cases no one wishes to have anything to do with a convicted criminal. In these cases new links with the world must be forged for the prisoner while he is in prison. This is possible only if there are intermediaries who enjoy the confidence of the prisoners and of the outside world alike. Experience shows that teachers and the clergy are

[1] The provision in the Prussian Order of 7 June 1929 mentioned above that prisoners in intermediate prisons may be employed at the current collective agreement wage represents an effort to counteract the tendency to underpay ex-prisoners.

more persevering and successful in such work than the prison officials and governors. It would therefore seem preferable to entrust the task of finding work for discharged prisoners to voluntary organisations rather than to the prison authorities.

(2) In all cases where it has not been possible to employ a prisoner on a trade he had previously learnt he should spend a certain period in an intermediate prison before his discharge. In it he should learn the conditions of free labour before becoming a free worker himself. He should remain in this establishment until suitable employment is found for him.

(3) The possibility of facilitating the placing of ex-prisoners in free industry by legislative measures should be examined. The laws of many States now require employers who employ a certain number of workers to engage one or more seriously disabled men. It is not a very long step from the physically disabled to a similar provision on behalf of the morally disabled, of course with suitable precautions to exclude hardened criminals from its benefits.

(4) Measures might also be taken to secure the payment of adequate wages to ex-prisoners. The extension of collective agreements would do much to remedy the defects which still often exist in this respect, as their provisions apply also to ex-prisoners. By a careful choice of employment the bodies entrusted with the after-care of prisoners could also do much to prevent them from being underpaid where there is as yet no protection by collective agreement.

These suggestions are in almost complete agreement with the principles laid down in the Standard Minimum Rules, which give special attention to the assistance of liberated prisoners. The provision in Rule No. 54, that assistance should begin during the period of detention and should be based upon an exact study of the conditions of life of the prisoner and his relations, seems to be of outstanding importance. The same principle is the basis of the proposals put forward in this report.

At the same time, Rule 55 raises a question for which a different solution might perhaps be preferable. This Rule states that it is desirable to encourage, as far as possible, in connection with each establishment, the formation of aid societies, which will take charge of the assistance of liberated prisoners. There is a strong case for setting up—in addition to these societies,

but independently of individual prisons—a national organisation for the assistance of liberated prisoners. It is often not possible to find employment for a prisoner in the immediate neighbourhood of the prison, as this depends on the conditions of supply and demand on the local labour market. Thus it may be necessary to send the discharged prisoner further afield. When this happens it is most undesirable that he should lose the benefit of all organised assistance for ex-prisoners.

In order to procure employment for prisoners and to ensure organised supervision, the aid societies attached to the prisons should be supplemented by committees in various districts throughout the country composed of persons with experience of ordinary welfare work. Wherever possible these bodies should not be State institutions. They would be required to help ex-prisoners in difficulties. Any suggestion of police compulsion should be avoided.

Summary and Conclusion

The aim of employing the prisoner on instructive and useful work is to strengthen his moral character during the period of detention and make him capable of living a straight and regular life. Prison labour is thus an important weapon in the campaign against crime. Like the penalty of imprisonment itself, it is of quite recent origin. It follows that nearly all the existing regulations for prison labour are still more or less in a state of evolution.

This is particularly true, as this report has shown, of methods of organising prison labour. Many of the systems that have come into existence leave much to be desired from the social point of view.

A question which is arousing growing international interest is the relations between prison labour and free labour. In studying this question, it was found that there is not yet sufficient information available to reach any final international decision on the question of competition between prison labour and free labour.

The conditions of employment of prisoners were also studied from the point of view of social policy. After a brief survey of the special features of the labour employed and of the technical defects of prison undertakings, it was found that, under most of

the regulations in force, the prisoner is obliged to work without possessing the right to work.

The study of working conditions in prisons showed that international regulations might improve these conditions, in the interests of the efficiency of the prison system and also of free industry and of the prisoner himself. Such regulations should deal first with the question of giving the prisoner a legally guaranteed remuneration for his work, and also with the fixing of hours of work (bearing in mind the purpose of the sentence of imprisonment) and the question of the daily task.

As regards questions of safety and hygiene, it was found that while dangers are not less numerous in prison labour than in free labour, legal protection is often absent.

Vocational and general instruction is of great importance for prisoners. For young prisoners it can be turned to specially good account. Adolescents, women, and elderly prisoners also need special protection in other directions in regard to prison labour.

This part of the survey concluded with a study of the prisoner's right of appeal and other means of ensuring the observance of the necessary protective regulations.

But this did not entirely exhaust the problem of prison labour. Since the aim of the work imposed on the prisoner is to enable him to return to a regular life, ways and means must also be found of achieving the difficult transition from prison life to liberty. Special consideration was therefore devoted to this question.

In its Standard Minimum Rules the Berne Commission has also realised the necessity of taking the social point of view into account in any future international regulations on the treatment of prisoners. The present report, however, would seem to show that, in addition to the questions of prison labour dealt with in the Standard Minimum Rules, there are others which must not be excluded from international regulations, and that several of the provisions in the Berne Rules might be put in a more effective form from the standpoint of social policy. Neither the organisation of prison labour nor the competition between prison labour and free labour is mentioned in the Rules. The question of the prisoner's right to work is also ignored. The question of the remuneration of prisoners is dismissed in a simple recommendation. The daily task or quota of work is not considered. Lastly,

the Rules contain no special protective provisions relating to elderly prisoners.

It cannot be urged against the proposals made in this connection by the International Labour Office that international regulations on the treatment of prisoners need not necessarily deal with these questions. Such a proposal is hardly practicable. As shown above in outline, work and education constitute the essence of the modern prison system. An incomplete treatment of prison labour would therefore endanger international regulations on the prison system as a whole, and comprehensive regulations for the whole question of prison labour should be an essential part of any international agreement on the question.

If this programme is to be carried out it will be necessary to continue and extend the studies already made on this subject. On this point some observations may be offered. The State, employers, and workers have different interests in regard to prison labour. The interests of these three groups deserve protection ; they must therefore be considered and reconciled. It follows that, in any enquiry undertaken by the League of Nations relating to prison labour, the participation of representatives of these three groups—Governments, employers, and workers—must be secured. This is especially true as regards the relations between free labour and prison labour. The necessary condition is fully satisfied by the constitution of the International Labour Organisation, whose principal organs, the Conference and the Governing Body, consist of representatives of each of these three groups ; the same principle is applied in the committees set up by the Conference and the Governing Body. Should it be decided to pursue further the valuable idea of international regulations on the treatment of prisoners, the International Labour Organisation will therefore have to lend its assistance for the necessary study of the question of prison labour.