# Incarceration and its Alternatives in 20th Century America

by

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# I. Introduction

The Report that follows surveys the concepts and treatment of the deviant in the United States, 1870-1940. It is an effort, first, to understand the origins of the reform impulse in the field of criminal justice and mental health. Beginning in the first two decades of the twentieth century, reformers devoted unprecedented attention to alternatives to incarceration. In criminal justice, probation, parole, and juvenile court procedures gained popularity. In mental health, innovations included out-patient care, after-care, and the design of an entirely new type of facility, the psychopathic hospital. In fact, the program that Progressive reformers designed in the period 1900-1920 remained the essential program of reformers until the middle 1960s. Throughout these years, those who would improve the system agreed on what constituted the proper agenda and goals: probation and parole were to be upgraded, out-patient care extended, and the juvenile courts strengthened. There was, to be sure, dissatisfaction with the way these programs were actually operating. But that dissatisfaction was with legislatures that were not funding programs adequately. No one doubted the advisability of the procedures; what was at issue was how best to fulfill the design. Thus, the synthesis achieved in the 1900-1920 years dominated reform thinking and action down until yesterday.

Beginning in the mid-1960s, the Progressive tradition confronted a fundamental challenge. For the first time, the very concepts of probation, parole, and psychiatric treatment of the mentally ill, became the focus of a novel attack. Now the dissatisfaction is no longer with the implementation of the program. The significant number of court challenges to parole procedures, to the extensive authority of the juvenile court, to the right of the state to confine those who may be mentally ill but not overtly dangerous, are one indication of this change. By the same token, so are the numerous attempts in various states to substitute new kinds of sentencing and parole regulations for the Progressive indeterminate sentencing and parole. It is the contention of the Report that follows that one cannot begin to understand or respond to the new challenge without a firm understanding of the ideological underpinnings of the older program, of what it was that Progressives hoped to accomplish.

The second major focus of the Report is on the outcome of the Progressive programs. What happened when probation, parole, and the other procedures were translated into actuality? What were the results of the reform effort? As we shall see, none of these programs were ever fulfilled in the ways that their designers had hoped. The gap between rhetoric and reality was always considerable. Why should this have been so? What elements undercut reform ambitions? Why was it that failure and persistence went hand in hand?

This record is critical not because history, in any simple sense, repeats itself. Whatever contingencies affected reformers' blueprints in the 1920s will not reappear in identical form in the 1970s. Nevertheless, the historical record is of major relevance to those who would innovate in these fields today. At the least, it clarifies the pitfalls that can all too easily thwart attempts at change. At best, it helps to make clear what options we do have for promoting change. An awareness of the historical record does not supply specific blueprints. It can, however, stimulate and reinforce a spirit of experimentation in the field of criminal justice and mental health.

## II. The Nineteenth-Century Legacy

By the 1870s, even more clearly by the 1890s, it was apparent to every observer of the system of incarceration in the United States that the first promises of the founders of these institutions were not being realized. Prisons were not rehabilitating their inmates and insane asylums were not curing their patients. Worse yet, it was also apparent that penitentiaries and insane asylums were doing harm; overcrowding and even brutality were all too commonplace. Nevertheless, despite the relative novelty of incarceration--the institutions, after all, were only one generation old--and despite its failures, institutions retained their centrality to the system and continued to enjoy legitimacy. Why did post-Civil War American society continue to rely upon institutionalization? The answers to this question will both clarify an important chapter in the history of American prisons and mental hospitals and at the same time prepare us for the new orientation that Progressivism would introduce in the beginning of the twentieth century.

There is no mistaking just how widespread was the awareness of the disappointing operation of prisons and mental hospitals in the post-Civil War decades. State legislatures held investigations of prison conditions and discovered barbarous modes of punishment; the rack, the water crib, and suspending criminals by their fingers, were among the punish-

ments uncovered. Investigations of mental hospital conditions revealed that patients were left in idleness, with nothing approximating treatment being offered to them. One reviews these exposures with a certain tension: will the 99 pages describing dismal conditions be followed by some effort to consider alternatives? Will the inadequacies of institutionalization prompt a call for abolition? Invariably the answer is no. The 100th page continues to uphold the ideal of incarceration. As dismayed as observers were at the abuses, still they continued to believe that incarceration was the proper mode of response to deviant behavior.

To understand this attitude, it is proper to look first to functional considerations. By the 1890s, the prisons as well as the insane asylums were filled with an immigrant population. First it was the Irish and later the Slavs and other Eastern European groups that occupied the wards and cells. Native-born Americans were quite frank about their disdain for the immigrant; at their best, the aliens were dangerous. If deviant, they were intolerable. All of which meant that no matter how inadequate institutional conditions, they were good enough for the immigrant.

But functionalism was only a part of the story. No less important, particularly among people of good faith, was the enduring power of the ideology of rehabilitation. The dream of cure was so grandiose that it would not be questioned. Since the institutions were born of an effort to do good,

surely they could be improved to the point where they would do good. Benevolent motives would finally overcome the inadequacies. Hence, the 100th page of the legislative report does call for improving the standard of care in the institutions, does declare that rehabilitation is so significant that institutionalization must continue, albeit in an improved way.

Moreover, observers of institutional conditions shared a very particular reading of history that inhibited efforts at change. As reformers viewed it, prisons and mental hospitals had replaced the gallows and the dungeons. To consider abolishing these institutions would inevitably mean a return to such horrid practices. In a sense, their reading of history committed them to present practices. From their perspective, to tamper with the prison or the asylum would inevitably mean the triumph of even less satisfactory methods.

The late-nineteenth century decades also witnessed a shortage of new ideas on how to treat the criminal and the insane. In the 1880s, for example, neurologists began to criticize the inadequate treatment and research of medical superintendents. They were highly critical of the state of asylum laboratories. But in the end they had very little to offer in the way of departures beyond suggesting the need for more research into tissue pathology. Their goal was for a laboratory in the basement of the asylum. They had very little to say, however, about what ought to be done immediately for the patients.

Then, too, many critics of the institutions could identify a "model place," one that demonstrated the validity of the idea of confinement. The problem, it seemed, was with inadequate administration. The model institution of these years was the Elmira Reformatory, one of the first institutions to attempt to classify its inmates and to release those who appeared to be doing well. Elmira captured a great amount of reformer attention. But the result of that attention was to make it seem that other institutions could emulate the Elmira system. In a very real way, the model put all the blame on wardens and guards. Men of talent ought to be able to run a rehabilitative institution.

Thus, by one route or another, Americans in the post-Civil War decade continued to think of institutionalization as the proper way to respond to crime and insanity. Not only in practice but in ideas, institutionalization seemed the right mode of response. How this consensus altered, why American reformers began to think of alternatives to incarceration, of community care and treatment, and what the results of these new programs were, is the focus of the analysis that follows.

## III. The Origins of Probation and Parole

In the history of American criminal justice, the Progressive period marks a major dividing point. For most of the 19th century, the penitentiary had monopolized the system of punishment, serving as a first resort, both in ideological and practical terms, for the correction of convicted offenders. Then, beginning in the opening two decades of the twentieth century, Progressive reformers designed and implemented the first alternatives to incarceration. Specifically, probation and parole became standard procedures.

That so fundamental a change has not received even passing attention from historians or other students of criminal justice is unfortunate. It reflects, first, the paucity of research both in social history and in legal history. And this lack of attention is especially disturbing today, for public policy is now in the midst of a most important challenge to Progressive solutions. With the abolition of probation and parole under serious consideration, the roots of these procedures warrant close analysis.

Of the Progressive character of these new measures there is no doubt. Probation, the immediate post-conviction release of offenders into the community under some type of supervision, was put into practice in the 1900-1920 period. In 1900, only six states provided for probation; by 1920 every state permitted juvenile probation and 33 states adult probation. At

the same time, the indeterminate sentence joined to a system of parole altered the character of sentencing. Before 1900, judges fixed, and fixed precisely, an offender's period of incarceration. Under the new system, judges dispensed minimum and maximum terms and left it to the parole boards to set the time for actual release. In 1900, only a handful of states followed these procedures. By 1923, 47% of all inmates incarcerated carried indeterminate sentences and over one-half of all releases that year were via parole.

The very speed with which this reform was accomplished reflects the broad character of the coalition supporting it. Judges, district attorneys, wardens, reformatory superintendents, as well as lay leaders and executive directors of various charitable associations stood together with social workers and criminologists, doctors and psychiatrists. Those who saw themselves in the reform tradition were in agreement with those charged with the day-to-day administrative responsibilities on the wisdom of the changes.

To understand the origins of these first alternatives to incarceration, the role of ideology must be clearly understood. The ideological underpinnings of the reform movement were, in the first instance, critical to its success. Whatever practical advantages probation and parole offered, the rapid and widespread acceptance of these programs testified to the compelling character of the reform rhetoric. To reformers, probation and parole represented a turnaway from the idea of

vengeance to the notion of rehabilitation. The fixed, flat sentence, they insisted, albeit only half correctly, reflected the idea that an offender deserved only punishment. So too, reformers believed that the fixed sentence violated the principle of individual justice. Only such measures as probation and parole could take into account the potential of the deviant to be rehabilitated and reflect the complexity inherent in each individual case. No word was more popular in the lexicon of Progressive reformers than "individual." Again and again they insisted that the criminal law had to respond to each individual offender, not to uniform categories of offenses. As one of them put it: "In the old system the main question was, what did he do? The main question should be, what is he?" As the most popular slogan of the period phrased it, "Treat the criminal, not the crime."

Reformers' faith in the efficacy and desirability of this statement reflected three shared principles. First, Progressives were confident that they understood the roots of deviant behavior. Second, Progressives believed that they had at hand the best methods for eliminating deviancy. Finally, they were confident that they knew who should be responsible for this task, the agent that should carry it out, that is, the state.

Although two major types of explanations competed in the Progressive period, the one environmental, the other psychological - in fact, the differences between them were not

critical. To many Progressives, especially those who followed a social science orientation, the roots of deviancy were to be found in substandard living conditions. They had no difficulty spelling out the environmental causes, which ranged from tenement house conditions to sweatshop labor, from ill health to low wages. At the same time, a group of new-style psychologists, like Adolph Meyer and William Healy, were confident of their ability to trace deviant behavior to individual psychological histories, to "mental images." Both camps, however, agreed that each criminal had to be approached on a case-by-case basis. In other words, criminal justice had to be flexible and open-ended, not fixed and determined. What was required was a massive increase in discretionary authority, not the continued dominance of rigid codes.

Progressives were remarkably confident that this orientation would produce cures. They took a good part of their inspiration from the new prestige of medical research. The most popular metaphor, really model, for the criminal justice system became a medical one. Just as doctors treated each patient individually to effect a cure, those in criminal justice should treat each offender separately and thereby effect rehabilitation.

Finally, it became the state's task to carry out this mandate. Perhaps the most distinguishing feature of Progressive thought was its eagerness to bring in the state to solve all types of social problems. In criminal justice (as in

banking or commerce) to endow the state with authority was to promote the general good.

These general considerations underlay the design of probation and parole. Probation, with its pre-sentence investigation, was certain to individualize criminal justice. The probation officer's report on the convicted offender would contain all the data, both psychological and environmental, that would allow for a case-by-case approach. So too, the probation officer's supervision of the released offender, and the parole officer's supervision of the ex-inmate, represented the occasion for treatment. To some, the probation-parole officer was to help the criminal escape detrimental environmental influences; to others, the officers were to serve as psychological counselors. In either instance, reformation would be realized through the new procedures. That this entire program, with its investigatory and supervisory powers, entailed a vast increase in the discretionary power of the state did not trouble reformers. To the contrary, it was almost a point of pride, an indication that their designs were in harmony with the spirt of the age.

The ideological underpinnings of probation and parole, as reformers presented them, were very appealing, promising at once to revolutionize the system and to make it more effective. But ideology was only one reason why the program took hold

and took hold so quickly in the United States. What must be understood is just how useful the principal actors in the field of criminal justice found the new provisions. Wardens, judges, and district attorneys each stood to gain in very concrete ways under the new program.

No group more vigorously championed the indeterminate sentence than prison wardens. By 1900, the annual Congress of the National Prison Association had warmly endorsed the idea. Wardens were eager to see prison terms equalized among offenders, believing that the indeterminate sentence, through the parole board mechanism, would accomplish this task. Even more important, they understood just how powerful a disciplinary weapon the indeterminate sentence gave them. For the first time, they had a critical, often determinative, role in deciding how long an inmate would remain confined.

So too, probation extended the authority of the judges, giving them an option that they had not had before. As for parole, judicial authority was diminished: parole boards, and not judges, now decided on the moment of release. But there were compensations: in that nightmare case of a released prisoner who immediately committed another offense, the sentencing judge could blame the parole board. Citing the spread in his minimum-maximum sentence, the judge could note that he had authorized a longer term, but it was the parole board that had decided on release earlier. And to judges facing periodic reelections, this was no insignificant argument.

Local district attorneys also accommodated themselves easily to the new Progressive programs. During this period, court calendars became increasingly crowded. Plea bargaining became more and more common--and probation and parole in many ways facilitated the process. Any offender offered probation would be quick to "cop a plea." And the spread in a minimum-maximum term provided the district attorney with leeway; a high maximum would assuage the community, a low minimum might well bring a plea of guilty. Indeed, the only group that stood out against the reforms was the police. But theirs was a minority voice, certainly not able to withstand the tide of both promises of reform and administrative conveniences.

## IV. The Realities of Probation and Parole

That a gap should have separated reform rhetoric advocating probation and the reality of its implementation cannot be unexpected. An ambitious and optimistic innovation will often suffer dilution in day-to-day practice. Nevertheless, the record of probation in the opening decades of the twentieth century is still surprising. For one, the gap between ideal and reality was enormous; the translation bore no resemblance to the original text. Yet, at the same time, probation to a remarkable degree satisfied the operational needs of administrators of the criminal justice system. If reformers could not recognize their creation, those charged with official responsibilities delighted in it. Thus, in light of this disparity, one might have anticipated a conflict between the two camps, or at least a reform response that was sharply critical of the outcome. But, in fact, no such confrontation occurred. Reformers continued to plead for probation, calling for improvements, but never suggesting that the premises underlying their innovation deserved reconsideration in light of its own subsequent history. In the end, probation persisted, kept alive by the guarded faith of the well-intentioned and the practical needs of the decision makers.

Of the facts of the situation there is no dispute. Investigatory committees of all types returned similar verdicts: probation was implemented in a most superficial, routine, and careless fashion, "a more or less hit-or-miss affair."

The system did not take root in rural areas. More important, in urban areas the probation personnel, their caseloads, and the quality of pre-sentence reports and post-sentence supervision never even approached satisfying the reform criteria. Probation officers were almost invariably lacking adequate training. In most areas, judges had complete authority to select the probation staff--which all too often meant that friends or relatives or political supporters were rewarded. Moreover, the jobs were not particularly well-paying, and thus few people with training in social work or psychology sought the posts. Not only were probation officers undertrained, they were also overworked. The reformers had looked to a client officer ratio of 50 to 1, but almost nowhere did it exist. "It is admitted by all concerned," reported the Wickersham Commission, "that probation services are almost everywhere understaffed....In many jurisdictions 'the caseload' is many hundreds of cases."

This overload gave full testimony to the inability of probation to deliver on its two major premises--to establish the suitability of convicted offenders for probation and to conduct intensive post-sentence supervision. At best, the pre-sentence report represented a biographical sketch of the offender (with the information taken from him) together with the more or less fleeting impressions of the probation officer. Not very much more could be claimed for probation supervision. There was little advice given and even less case work carried

out. Many probationers were obliged to sign a long list of conditions. But it is doubtful whether these conditions were typically enforced. In other words, probation not only failed to do case work, but failed to exercise a police-like supervision.

Why did probation deteriorate so quickly and so uniformly? To say that there were too few workers, too low salaries, and too many cases is merely to reframe the issue: Why were there so few workers, so heavy an overload? To begin with, the program was too ambitious. "Probation," admitted Harvard law professor Sheldon Glueck, "overclaimed its case." More, the state of theory about the roots of deviancy was far too overgeneral to be useful. In effect, probation officers were told to report on everything, which in many ways was the same as being told to report on nothing. And on the basis of such knowledge, there was not much prospect of effective treatment. What little training probation workers received on adjusting the maladjusted was vague and inchoate: at best commonsensical, at worst, irrelevant. Moreover, political realities assumed a critical role as well. It was state governments who paid for the incarceration of offenders in state prisons and the locality that usually paid all the cos release on probation. In other words, to run a probation department would cost the locality a good deal of money; to send their offenders on to prison would cost them, at least directly, nothing. Local financial considerations, then, worked against effective probation.

But why, then, did probation persist? There were periodic efforts in the 1920's to abolish the program, but invariably they did not succeed. Opponents of probation argued that probation coddled the prisoners, but even so popular a rhetoric had little effect. The answer rests with the specific interests of those who administered the criminal justice system. The prosecuting attorneys, the judges, and the criminal lawyers, those who might be expected to oppose a "coddling" system, were the very ones who defended it.

The operational significance of probation emerges clearly as soon as one investigates which kinds of offenders actually received probation. Their first distinguishing characteristic was that often they had pleaded guilty to a lesser offense than the original indictment. Put most simply: probation went to those who plea-bargained, and that, in and of itself, made it very appealing to those with day-to-day responsibilities for administering the system. "We very rarely have a plea of guilty to any serious offense," noted one Illinois prosecutor, "unless the defendant has a very reasonable chance to be put on probation and, in my opinion, I think the great majority of pleas of guilty are induced by the opportunity or hope of a release on probation." The New York Crime Commission reported that "a comparison of suspended sentences with the nature of pleas in criminal cases indicates that pleas of guilty are much more likely to win suspended sentences than pleas of not guilty." The Attorney General's Survey studied cases placed on probation

in Texas (between 1934 and 1935) and discovered that in the overwhelming majority of cases those given probation had entered guilty pleas. And many judges were frank to admit just how the guilty plea influenced them. In answering one questionnaire, 90 percent of the judges stated: "A plea of guilty in most cases resulted in their imposing a more lenient sentence than they would have imposed if the criminal stood trial." In sum, the administrators of criminal justice were not at all disturbed by the way that probation worked itself out in practice. If pre-sentence investigations were crude and post-sentence supervisions superficial, if the rehabilitative promise of the system was not being realized, their ability to use probation for their own ends was in no way diminished. Probation was made to order for an over-burdened court system.

Did probation actually reduce incarceration? Was probation an alternative to the penitentiary, as reformers had hoped? It may well be that probation was more of an add-on to the system than a substitute for the state prison. It may well have been an alternative to the suspended sentence, not to a prison sentence. Over the six years that probation took root in New York State, for example, the number of persons under criminal justice jurisdiction climbed by 50 percent, with much of the increase due to the expansion of probation rolls. The state penitentiary population did not decline. Rather, between 1908 and 1926, 240 thousand adults in New

York State went on probation; and given the limited prison and jail facilities and tax conscious legislators, it is simply not possible that most or even many of them would have been incarcerated. The new system, in other words, allowed the state to exert a legal authority over a group of people who otherwise would have been left to their own devices under a suspended sentence. A few contemporaries acknowledged this outcome. "It is an interesting fact," the New York State Crime Commission argued, "to be noted by those who are critics of probation on the ground that it 'encourages' leniency, that in New York County where probation is probably the most highly developed and most completely administered, the rate of suspended sentence is the lowest in the state." Or as a leading reformer, Hastings Hart, commented: Before probation "judges had been accustomed to suspend sentence." With the new system: "every time a man was put on probation and had to make return to an officer... and was liable to be brought back into court if he did not go straight, you can see that you had a much tougher hold on him."

At no point in the pre-World War II period (or, indeed, much before the late 1960's) did reformers pause to wonder whether the gap between rhetoric and reality ought to lead them to abandon the new program. For one, they remained convinced of the conceptual validity of probation; the

more that a psychological understanding of deviancy took hold, the more valuable a tool probation seemed to be, at least in theory. Moreover, the opponents of probation were so crude in their arguments that reformers could not join hands with them. Those who attacked probation called for longer and tougher sentences, abandoning altogether the notion of rehabilitation. For Progressives to make an alliance with such a group seemed out of the question. Finally, reformers could always find one success story or another to give them satisfaction. In this or that particular case probation had worked, recidivism had not occurred, and, therefore, the reform deserved support. Thus, secure in their own belief that probation, if only properly implemented, could be a benefit, reformers continued to give it full backing.

No change that Progressives introduced into criminal justice took hold more thoroughly or had more long-lasting consequences than the indeterminate sentence and parole. In 1900, only five states allowed for indeterminate sentences to the penitentiary and 12 states had some form of adult parole. By the mid 1920's, 37 states had these types of sentencing codes and 44 states provided for release on parole. In fact, the more serious the crime, the greater likelihood that the sentence would carry a minimum and a maximum. Flat time, on the whole, was reserved for lesser

offenses. Thus, over three-quarters of those serving terms with a maximum over five years were serving indeterminate sentences. And such sentences were remarkably open-ended. In the first half of 1923, for example, of 4,500 sentences with a minimum of one year, one-half carried maximums of over five years. In 1932, of 14,600 sentences with a minimum of one year, fully half carried maximums of over ten years. In essence, sentences of one to five and one to ten had become typical.

The number of inmates released on parole also rose. In Pennsylvania, about 80 percent of those annually released after 1911 left on parole. By the middle 1920's, over 90 percent of discharged inmates in New York, Washington, Colorado and Indiana went out on parole; in Ohio, Illinois, Michigan, New Jersey, Maine, Kansas, and Massachusetts the figure was over 80 percent. Thus, a procedure which had begun in the post-Civil War period with a few reformatories releasing an especially deserving inmate, had become a standard practice in all prisons for the overwhelming majority of inmates.

Yet, parole was the most unpopular of Progressive innovations in criminal justice. In these decades it became the whipping boy for all the failures of law enforcement agencies to control or reduce crime. When fears of a "crime wave" swept the country in the 1920's, parole inevitably bore the brunt of attack. And it was a bitter

and pervasive attack. Practically every crime commission and investigatory body in the 1920's and the 1930's opened its examination of parole with a statement conceding massive public opposition and disgust. One has only to glance at newspaper coverage of crime stories to confirm this statement. In the popular press, parole was the equivalent of "turning the killers loose."

But then how are we to understand the simultaneous triumph of parole and the persistence of angry attacks? How did a system perpetuate itself right through to the 1960's when it suffered from such thorough popular disdain? To answer this question, we must first explore the internal operations of the system, how it functioned, whom it served, and with what effects. Once again, we will be tracing the links between reform ideology and administrative convenience, how it was that grand hopes and operational needs came together to sustain and perpetuate a procedure.

No sooner does one explore the realities of parole then the question of persistence becomes even more complicated, for almost everywhere parole compiled a weak record. Neither of its two essential tasks, the setting of release time and post-sentence supervision, were carried out with competence or skill. Parole board members had little qualifications for the task, owing their appointments either to politics or to personal favors. The Washington Parole Board in the early 1930's, for example, was composed of a

wholesale jeweler, an insurance broker, and an operator of a general store. In Pennsylvania, parole from the Eastern penitentiary was left to a board chaired by an ear, nose and throat doctor, together with a lawyer-businessman from a rural section, a produce merchant, a director of physical education in a high school, a university criminologist, and two businessmen.

If board members typically had no particular qualifications for determining when an inmate ought to be released, the dockets that they received on each case could do little to enlighten them. In three-quarters of the states, parole dockets were threadbare, supplying little more than a brief family history, past criminal record, and prison conduct notation. Some states did compile a fuller dossier, but as more than one survey discovered, a very complete dossier meant that the board would not read through it. The time devoted to each parole case was small. The standard practice of parole boards was to hold monthly hearings at the state institutions. At these hearings, members would simultaneously read the docket, interview the inmate, and then reach their decision. In one midwestern state, an investigator for the Wickersham Commission described how the parole board met for four hours one evening to decide the fate of 95 offenders: "The board not only studied the information presented to it about the offenders, but saw each offender and made a decision for or against parole....

In reaching 95 decisions in four hours, the board gave just two and a half minutes to each case... nor does the two and a half minutes make allowance for the time wasted by the entry and the exit of the prisoners."

Given the background of most board members, the brevity of their discussions, and the ill-defined nature of the guidelines, parole cases were often resolved for capricious reasons. Stenographic notes on parole meetings in the 1930's are filled with such statements as "I vote yes. That man has a good face." Or, "I vote yes. He isn't a bad looking fellow. He is a kind of slob, but I think he is alright."

Despite the common character of such phrases, parole outcomes were not invariably void of logic. The nature of the inmate's original crime and his prior record were relevant to board determinations. For crimes that parole boards considered minor, offenders would win quick release; for those considered major, inmates were denied parole. Moreover, boards were often much harder on the recidivist than on the first offender; they were reluctant to release those who had a long criminal record. In Pennsylvania, for example, only one-quarter of the 249 inmates released on parole from the Eastern State Penitentiary in 1925 at the minimum time were recidivists. As the Attorney General's Survey discovered as well: "Persons having a record of three or more incarcerations have less chance of parole

than first or second offenders."

Nevertheless, despite the fact that some elements of uniformity can be found in board decisions, the system was at its core arbitrary and unpredictable. Board members were predisposed to link the seriousness of the crime to the severity of the punishment, but no board, in any jurisdiction, attempted to define what constituted a serious crime or to reach a consensus of ranking of crimes that would guide them and inform inmates. Instead, each member reached his own estimate and made his own decision. Thus, one man would decide to grant an inmate parole and his colleague would declare: "No. He committed a rather serious crime." That ended the dialogue; there was nothing left to do except tally the votes. In sum, the boards were both bureaucratic enough in their procedures to get through their caseloads and arbitrary enough to keep everyone guessing as to the resolution of any specific case.

The frustrations of reaching an initial decision on whether to parole an inmate were all the more acute because parole supervision was not merely unsatisfactory but grossly inadequate. In effect, parole boards understood that to release an inmate on parole was to grant him unconditional freedom. Parole officers, like probation officers, were poorly trained and poorly paid, understaffed and overworked. In many jurisdictions, reporting amounted to mailing in a

postcard once a month. As one investigation in Illinois revealed: Parole officers "carry a load beyond any hope of efficient work; in fact, the bad itself is indicative of the mere formal nature of the supervision." Of all states, New York made the most serious efforts to translate parole rhetoric into practice. Yet, the 2,000 parolees were being supervised by only 12 full-time agents, together with an assortment of volunteers from private organizations. In fact, parole records were so poorly kept that no one could be actually certain of who was on parole and who was responsible for supervision of a given case.

The last, as well as one of the best indicators of the gap between parole rhetoric and parole reality emerges in an examination of parole revocation practices. Officers were supposed to intervene before the commission of a new crime. Actually, parole officers were usually in no position to make such judgments. Accordingly, parole revocations were low, generally under 20 percent, and the majority of revocation cases occurred for arrest on a new charge. In Pennsylvania in 1925-1926 "thirty eight of the forty one violators... had been taken into custody by the police in various parts of the United States because of their criminal activity." So too, in New York, new arrests made up a majority of the roughly 10 percent of cases recommitted to the penitentiaries.

We return, therefore, to our original question now complicated. Parole not only persisted right down to the middle of the 1970's, but did not undergo basic changes in organization. For all the public clamor and all the unsatisfactory nature of its functioning, parole survived relatively unscathed. How is one to account for such a record? The answer is to be found first, in the function that the program fulfilled within criminal justice. The most vigorous champions of parole remained the wardens. Some wardens throughout these years did manage to dominate the parole boards. Even where they did not, they could generally persuade a board to take into account their own strong feelings in any one particular case. More important, the warden could thwart the opportunity for release for an especially troublesome inmate by entering on his docket the kinds of information that many parole board members would be reluctant to ignore. Thus, in Pennsylvania, "extremely bad prison conduct will obviously prevent release at the end of the minimum sentence." What was, in effect, a veto power over parole for the warden was sufficient to promote his disciplinary ends.

Wardens were also locked into the system once it was in operation. They were compelled to favor its perpetuation because any diminution in the exercise of parole (let alone its outright abolition) invariably provoked enormous inmate

hostility--and wardens did not want to be putting down periodic riots. As soon as inmates began to anticipate release upon parole, once discharge under an indeterminate sentence was based on parole, then any effort to cut back on it meant a significant increase in time served. So just as wardens were leaders in promoting the change, they were also bound to support it once it became standard operating procedure. Almost invariably, then, wardens were eager to see paroles granted, not just to help alleviate overcrowding, but to keep peace among the inmates.

These sorts of conclusions seemed almost unanswerable to legislative committees investigating parole. No matter how critical they were of one or another part of the system, they were reluctant to restrict release procedures for fear of undercutting prison officials' power. They were also reluctant to tamper with parole because of a general belief that the boards served as a critical safety valve in keeping down prison overcrowding. It is surprisingly difficult to measure the accuracy of this contention. For one, the exact degree of prison overcrowding during these years remains problematic. To measure overcrowding requires an established definition of what constituted an institution's capacity--and that judgement was left to each warden. The result was vast discrepancies in definitions such that one cannot be certain of the extent or degree of overcrowding. The only

safe conclusion is that everyone assumed that prisons were overcrowded and the assumption itself became an important fact in guiding responses to parole. The Minnesota Crime Commission, well aware of all the faults of the parole system, encouraged great caution in altering parole. "We must pause to point out," it declared, "the prison capacity that would be necessary if terms of imprisonment were lengthened or the maximum required in all cases.... All three institutions are now full.... A statistician has advised the Commission that an increase in one year in the term of all prisoners would necessitate another institution of the capacity of the prison at once." Here was a trade-off legislators had to reckon with. Parole could be changed only at a staggering cost.

Some groups, particularly judges and representatives of police forces, did press for a fundamental revamping of parole. They were vocal in their opposition and yet they accomplished very little. The New York legislature, for example, specifically prohibited one favorite judicial practice: setting a minimum that was more than one-half the maximum. Police objections counted for little more. While they complained that parole coddled the criminal, their major argument was that parole boards did not give them information about released inmates. The request for information might well be granted--but legislators were not about to tamper with parole on a more sustained basis.

So too, the district attorneys on the whole remained cautiously in favor of the new system. No matter how keenly they might have wished to get tough with the criminal, their stake in discretionary justice was too great to allow it. To reduce parole board perogatives, to lengthen sentences, to set mandatory minimums, would all discourage those charged with crimes to enter negotiations and pleas--and to district attorneys, who always had one eye looking to the docket, this was a grave matter.

Finally, for all the public clamor that parole involved leniency, many of those intimately knowledgeable about criminal justice had good reason to believe otherwise. The indeterminate sentence and parole release may well have served to extend, not curtail, state control over the criminal. It is no simple matter to substantiate this contention. Almost all of the studies carried out in the 1920's and the 1930's were self-serving, the work of parole advocates eager to make this point. And a host of methodological considerations bar any simple answer as to whether or not time served did increase. Yet, the burden of evidence at the moment does suggest that the new system did not shorten prison time. It is probably true that in many, but not in all instances, indeterminate sentences and parole promoted an increase in time served. It is clear that the maximums established were generally longer than the fixed times that judges had dispensed. The new sentencing system probably inflated

the measurement of time within the criminal justice system and judges had no difficulty in making calculations as to how much "real" time would be served given their sentences. By the same token, one study of Illinois practices, comparing those released in 1897 (under determinate sentences) with those released in 1927 (under indeterminate sentences), reported that "the actual time served by the criminal... is longer under sentences fixed by the parole board than when flat sentences were fixed by the courts." The parole board in the state of Washington also exacted considerably more time from inmates than had the courts. Events in California appeared to have followed the same course and Massachusetts, too, witnessed an increase in time served. In sum, the network of state control had not been curtailed. If anything, it had spread still further. Once again, very functional considerations of this sort may have helped to keep the new reforms integral to the administration of criminal justice.

## V. The Progressive Prison

For all their attention to would-be alternatives to incarceration, Progressive reformers not only anticipated the perpetuation of the prison system, but offered an elaborate program for its effective operation. They sought to extend to prison administration the same principles that underlay probation and parole. The Progressive design for the penitentiary represented the second grand reform program for incarceration, the successor to the founding ideology of the Jacksonians. The Jacksonians had organized the penitentiary routine as an antidote to the community. The disciplined regime of a well ordered prison was to inspire the community to emulation as well as reform the prisoners. (For the working out of this model, see my earlier work, The Discovery of the Asylum.) The Progressives reversed these principles. Lines of influence were not to run from the prison to the community, but from the community to the prison. Rather than serve as a model to the society, the penitentiary was to model itself on the society. "The conception of the prison as a community"--this was the organizing formula of the new reform program. Put most succinctly, "Temporary exile into a temporary society as nearly as possible like normal society on the outside would seem the best solution."

Thus, Progressives looked to abolish the inherited prison routines that came out of the Jacksonian separate

and solitary systems. The quasi-military lockstep was to be done away with; special striped prison uniforms had no place in the new system. Further, the core principle of the older system, the rule of silence, had to be eliminated. Thus, prisoners were to walk about the institution, dressed in pants and jackets, free to socialize one with the other. Progressives also introduced amusements and exercise into the prison routine and altered eating arrangements; a cafeteria with inmates sitting around tables engaged in conversation became appropriate. And so did commissaries, allowing prisoners to purchase the small but significant amenities that would add to a sense of a more normal life.

The design that best exemplified Progressive hopes for prison reform was Thomas Mott Osborne's Mutual Welfare League, the attempt to introduce the concept of inmate self-government into the penitentiary. Inspired in part by such juvenile institutional arrangements as practiced by the George Junior Republic, and perhaps by the work of settlement houses, Osborne wanted to make inmates responsible for their own conduct. The motto for the Mutual Welfare League became Gladstone's dictum: "It is liberty alone that fits men for liberty."

As set forth by Osborne and to a degree implemented by him as warden at Sing Sing in 1914, the Mutual Welfare League was to be the major governing body of the prison.

Inmates would elect a Board of Delegates who in turn would elect an Executive Board. This was to be the prison's rule making and enforcement body, subject to review by the delegates. In ideal form, the League would not necessarily abolish the jobs of the warden and the guards, but it would certainly circumscribe them.

Progressive reformers greeted Osborne's ideas enthusiastically. To Frank Tannenbaum, for example, "prison democracy" was the underlying solution to the problem of incarceration. So too, Osborne was the hero of the 1920 Prison Survey Committee report to the New York State legislature. The traditional prison, concluded the Committee, was "merely a mechanism for keeping men docile.... Mr. Osborne shifted the point of view toward the question of how to send them out."

At the same time, a second model shaped Progressive notions of prison reform, the model of prison as hospital. Reflecting the orientation of psychologists, psychiatrists, and social workers, the prison as hospital looked to implement methods of classification and training programs. The primary goal was to create diagnostic centers to which all convicted offenders would be sent. At these centers psychiatrists and their co-workers would interview, examine, and test the inmate to determine his aptitudes and, even more important, his potential for rehabilitation. This

program would allow for the effective operation of a rehabilitative institution. Classification would exclude from the reformable prison population the hard core deviant. Further, it would match program to inmate in such a way as to make programs effective. As a result, ex-inmates would enter the free community and function as law-abiding citizens.

The psychiatrists' devotion to the details of classification did not carry over into a careful and meticulous description of the actual content of rehabilitative programs. Psychiatrists were most comfortable in talking about vocational education and schooling, to the consistent neglect of psychological counseling or therapeutic intervention. However, their reluctance, or inability, to offer a special psychological program of their own actually brought them closer to other prison reformers. The result was an identity of agendas: classification of the inmate, a system of education, vocational training and work routines. All reformers believed that they could transform prisons from nightmarish places dedicated to punishing the inmate into a community that would help to rehabilitate him and thus serve as a testing ground for society. The prisoner who functioned well behind walls could function well outside it. The good inmate would be a good citizen.

The Progressive design for the penitentiary did affect the administration of incarceration. Yet again, rhetoric

and reality diverged. Change was at best piecemeal, not consistent. It is most accurate to think not of a Progressive prison, but prisons with more or less Progressive features.

A nineteenth century visitor to twentieth century prisons would have been first struck by the new style of dress. The day of the stripes did pass. Most penitentiaries also abolished the lockstep and rules of silence. Almost everywhere, prisoners were allowed "freedom of the yard." This same orientation also led to the introduction of movies, and soon radio made its appearance as well. As older fears of contamination gave way to a commitment to sociability the prisons liberalized their rules on correspondence and visits.

To a degree these innovations may well have lightened the burden of incarceration. Under conditions of total deprivation of liberty, amenities are not to be taken lightly. But whether they could normalize the prison environment is quite another matter. No one could think for a moment that inmates actually looked like civilians; the grey baggy pants and the formless grey jacket, each item marked prominently with a stenciled number, became the new prison garb. In effect, one kind of uniform was substituted for another. Freedom of the yard was limited to one or two hours a day and "aimless milling about" was the typical way it was passed. Most important, the bulk of a prisoner's non-working

time was still spent in his cell. Even liberal prisons locked their men in by 4:30 in the afternoon. As for the Mutual Welfare League idea, it was not implemented to any degree at all. The League persisted for a few years at Sing Sing, but a 1929 riot gave guards and other opponents the leverage to eliminate it. Elsewhere, wardens were simply not prepared to give over any degree of autonomy to inmates.

If prisons could not approximate a normal community, they fared no better in attempting to approximate a therapeutic community. By the 1920's state penitentiaries generally did establish a period of isolation and classification for entering inmates. For the first time, psychiatrists and psychologists did take up posts inside the prisons. Moreover, prison systems did implement a greater degree of institutional specialization. Most noteworthy, they frequently isolated the criminally insane from the general inmate population. In 1904, only five states maintained prisons for the criminally insane; by 1930, 24 did. But invariably, these innovations had little effect on prison programs. The presence of psychiatrists and psychologists on the prison payroll was probably of more symbolic importance than anything else. In 1926 only 29 fulltime psychiatrists served on prison staffs in 13 states (and five of them were in New York); only 22 psychologists were

employed in 11 states (and six of them were in New York). Moreover, even the most advanced states employed only one psychiatrist and perhaps two psychologists to service an entire prison population. They had to interview and classify all entering inmates (say, 500 to 700 a year), record their progress, and give recommendations. Clearly, the numbers alone made the task impossible.

The classification schemes themselves were for the most part crude. They typically separated the "better sort" from the "hardened" and "defective"--but these were descriptions not analytic categories. Further, these labels were really of little use within a prison. There was nothing that any warden could do with them except to fit offenders into boxes, without knowing how to move them from one slot to another. As one European visitor concluded: "If a mere layman were allowed to generalize, Americans were suffering from the illusion that when every offender has after examination been relegated to a type, a problem has been solved."

The consensus in favor of educational programs did not bring impressive returns either. Most institutions provided some kind of schooling, but only a handful of prisons ran satisfactory programs. Austin MacCormick, probably the foremost expert on prison education, declared in 1929: "Save for a few exceptions, we are tolerating a tragic failure. There is not a single complete and well-

rounded educational program in all the prisons and reformatories for adults in America." If anything, prisons fared even worse in providing vocational education. Formal offerings were few; only 34 prisons reported having such courses. What courses there were, were inadequate: "training" meant learning to make license tags or road signs, "not of a kind to be serviceable to the inmates upon their release from the institution."

In fact, prisons were unable to keep their inmates employed. No goal was more fundamental to the system from its very moment of inception. But try as they would, prisons simply could not supply work to their charges. Idleness was rampant and every observer knew it. And not only was there an agreement that such idleness was bad for prisoners' morale, but, no less important, bad for prison budgets. In 1928, only eight prisons of the 59 in the Wickersham survey showed a profit. And in the mid-1930's, the annual reports of only three states' systems could still do so. There were no shortages of explanations. Some states blamed the abolition of the convict lease system; others bemoaned the fact that they could not sell prison produce on the open market. Still others cited bad equipment and bad workers. But no matter how they tried, prisons no more approximated factories than they did hospitals or schools.

Clearly reformers' programs for incarceration were

overly ambitious, outstripping the powers of their own theory and the available social and technological resources. But the problem of the failure of Progressive reform goes deeper. Well-meaning observers insisted that rehabilitation and custodial care could go hand in hand. Incapacitation would provide the opportunity for rehabilitation; only an incapacitative system that was rehabilitative could fully protect society. But however neat the formula, it could not determine reality. The goals of custody and the goals of rehabilitation proved to be conflicting ones and the conflicts were always resolved in one direction only: the needs of incapacitation took precedence. Thus, uniforms could be changed and amusements and exercise introduced, and classification tried out. But these were either tangential or insignificant activities to the business of custody. The Mutual Welfare League, which did touch the heart of the prison system, could not be implemented at all. Prisons defined themselves, first and foremost, as holding operations and all other considerations were secondary.

The custodial character of the system was reflected in and perpetuated by the character of its personnel. In terms of recruitment and service, from wardens to guards, prison work was police work. The typical career line of the warden was from a police or an army career or a prison guard experience and then up the ladder. Recruitment to

the chief supervisory positions within the prison followed a similar pattern. In a sample of 58 of this group serving in 23 institutions, 29 percent came to prison work after a lengthy police career; 57 percent began as guards and slowly made their way up the chain of command. We know less about the specific careers of rank and file guards, but on the basis of their low wages and poor working conditions, it seems fair to conclude that prison work had to be a last resort for the unskilled and uneducated.

Nowhere was the clash between rehabilitative and custodial goals more evident than in the administration of prison discipline. The rules governing inmates' lives were so arbitrary and inclusive as to bear no relationship at all to laws of a normal community. What they did represent was the prison's effort to set down regulations in ostensibly formal terms, so as to make them appear more legitimate, rules that would give them the right to control all inmate actions. The actual exercise of prison discipline, like the rules themselves, never approximated community standards either. By the 1920's most prisons did have some kind of hearing process. But the defense took place before a board of one--the principle keeper or the deputy warden. Nowhere was the inmate allowed to bring in witnesses for his own defense; nowhere could he cross-examine a guard. Minimal due process protections seemed to pose too basic

a threat to the fundamental order and security of the institution.

As for the exercise of prison discipline, then as now it is frequently shrouded in secrecy. How much prison brutality there was cannot be accurately gauged. It is by no means clear that the substitution of solitary confinement for the whip constitutes a "reform." Every prison had its hole: the inmate was kept in a starkly bare concrete cell, unlighted and unventilated, fed bread and water, and, at best, supplied with a few blankets and a pot for his bodily needs. Moreover, administrators generally felt a need to implement back-up sanctions. So investigators discovered men in chains, the use of strait jackets, and corporal punishment as well.

In effect, the state and prison had struck a mutually agreeable bargain: as long as the warden ran a secure institution, which did not attract adverse publicity (through a high number of deaths or riots or inhumane practices that became publicly known), he would have a free hand to administer his prison as he liked. And most of the time, wardens lived up to their side of the arrangement. The number of escapes from the state prisons was low, and periodic prison riots or the circulation of horror stories about cruel and inhumane punishment never reached the point where they challenged the fundamental legitimacy

of the system. In the end, it was security that counted, not rehabilitation, and prison administrators fashioned their routines accordingly.

## VI. The Invention of the Juvenile Court

The Progressive attitudes that shaped the field of adult criminality, probation, parole, and prisons, also influenced in very dramatic ways the world of juvenile justice. The ideas on the causes of crime had their counterpart in theories on delinquency; and innovations in procedures for adult criminals had their counterpart in the innovation of the juvenile court. Between 1900 and 1920, an interpretation of the causes of delinquency and novel procedures to combat it emerged which would dominate reform thinking for the next fifty years. It was Progressives who offered an environmental and a psychological interpretation of the etiology of delinquency that with minor changes and shifts and emphases persisted for the next several decades. Even more important, it was Progressives who dramatically expanded the discretionary authority of the state. These reformers broke away from formal procedures to create the juvenile court. If we are to understand what is unique about our approach to delinquency, we must first understand the nature of this Progressive tradition.

To appreciate the appeal of the juvenile court, one must look initially to its ideological underpinnings, specifically to the promise of benevolence that pervaded it. It was this rhetoric of benevolence, more than any other single element, that legitimated the movement,

giving it public standing as a reform.

The groups that campaigned most enthusiastically for the juvenile court carried unchallenged credentials as philanthropists. None were more active than club women. Whether organized in congresses of mothers or in federations of clubs, it was women who fervently presented the mission of the court as uplift and rescue. So too, the founders of schools of social work, from Sophonisba Breckinridge to Julia Lathrop, gave the measure their stamp of approval. Further, the court idea received the support of psychologists and psychiatrists, with Chicago's Dr. William Healy probably the most active among them. The character of these advocates made the courts seem a clear victory for progress and humanity.

The aggressiveness and self-confidence with which reformers moved into the area of delinquency reflected, in the first instance, an environmental interpretation of the roots of deviancy, a shared sense of its origins as external to the child. Surroundings and circumstances, not innate characteristics, bred delinquency. But these elements were specific and limited. The problem was not endemic to the entire society, but only to one particular segment of it, the slum. The juvenile offender was not prototypical of the citizenry, but of only one part, the immigrant population.

The classic statement of this view came from Sophonisba Breckinridge and Edith Abbott in <u>The Delinquent Child and</u>

the Home. The roots of delinquency, as they explored them, were found in the immigrant life styles, their tenement houses and their street life. In some cases, immigrant parents did not know that the law said that children had to be in school; in other instances, poverty led children to steal. And how could mothers so busy earning a living be at home to supervise their children? The problem went still deeper, however. Some immigrant parents were so intent on accumulating property that they sacrificed the welfare of their children to satisfy their own economic ambitions. Thus, children went out to work too soon and, rebelling against such a harsh regimen, found themselves afoul of the law. Other Progressive reformers offered much of the same diagnosis, turning an analysis of the evil effects of a poor environment into a check list of the inadequacies of immigrant ghettos and habits.

Yet, despite the grimness of these descriptions, the Progressives were optimistic about their ability to respond effectively, precisely because they defined the problem as local and specific. Broadly put, immigrants had to become Americans, middle-class Americans. They had to learn to respect private property, to send their children to school, to give up Old World vices. They were to become hard working and law abiding. To be sure, they could not do

this alone. Progressives did not doubt the necessity of their own intervention. But confident of the pre-eminence of their values, reformers energetically moved to fulfill these principles.

A second and different approach to the origins of delinquency gained popularity in the Progressive period and even more of a following in the next decades. This interpretation reflected psychological as opposed to environmental considerations. It looked to the mental state as opposed to the circumstances of the delinquent. And this interpretation too, for different reasons, defined the juvenile court as the proper antidote to delinquency.

The outstanding exponent of this view was William Healy, in his 1915 text, The Individual Delinquent. Healy was not an environmentalist, noting that "poverty, and crowded housing, and so on, by themselves alone are not productive of criminalism." Rather, "it is only when these conditions in turn produce suggestions, and bad habits of mind and mental imagery of low order, that the trouble in conduct ensues." In sum, "all problems connected with bad environmental conditions should be carefully viewed in the light of the mental life."

Whatever the intellectual differences between an environmental and a psychological approach, the practical policies that flowed out of them were identical. Both

camps were eager to respond to delinquents on a case by case basis. Both were eager not to allow the procedural requirements to interfere with the helping hand of the state. Both were eager to avoid punishment and to provide treatment. In short, both looked to substitute the juvenile court for inherited procedures.

The design of the juvenile court program reflected these judgments. The court was to be concerned not with the specific charge or crime facing the delinquent, but with his state of being, his moral character and life style. If a boy came before the court, explained Boston's juvenile judge Harvey Baker, "for some trifle," like failing to wear the badge entitling him to sell newspapers, but then turned out to be a chronic truant, the court would respond to the larger problem, not merely to the charge at hand. And clearly a court determined to explore the "state of mind" of the delinquent should not be bound by formal rules of procedure. Since its aim was to effect rehabilitation and not to administer punishment, proponents everywhere moved to relax the style of juvenile court proceedings. They did not banish lawyers from the courtroom, but they did not believe their presence to be necessary or appropriate. In a similar spirit, juvenile courts did not follow accepted rules of testimony in adult proceedings and trial by jury seemed equally out of place.

At the heart of the juvenile court program was probation. Once again it had a double purpose, to deliver pre-sentence information and carry out post-sentence supervision. Reformers also expected that probation officers would simultaneously upgrade community environmental conditions. Yet, at the same time, for all their faith in probation, reformers were fully prepared to empower the courts to exercise still another option: to incarcerate the juvenile offender. Probation was a proper first resort, but institutionalization would have to remain a back-up sanction for those offenders who did not take probation seriously. So too, reformers were willing to expand the power of the juvenile court over the family. So certain were they of the benevolence of their motives that they were ready to override parental wishes for the greater good.

Clearly, reformers had fashioned a rationale and a program whose goals seemed to offer something to everyone. The juvenile court rhetoric and procedures were at once soft-hearted and tough-minded, protective of the child and mindful of the safety of the community. One might debate endlessly, and futilely, whether the child savers used the language of benevolence to cloak a repressive innovation, whether social control elements were the motivation, rather than humanitarian concerns. The critical

point is that reformers saw no conflict here; there was nothing hypercritical in their approaches. The welfare of the child seemed synonomous with the welfare of society. The juvenile court was in the best interest of everyone. So the pages of the most important organ of the movement, the Juvenile Court Record moved easily from a heartfelt sympathy for the child (we must be "patient and forgiving"), to a tougher motto: "Every homeless child is a menace to society and the State."

Once again, a Progressive reform ideology attracted a host of supporters, not merely because of the power of the rhetoric but because of the administrative conveniences that the innovation supplied. Club women, social workers, and good-hearted philanthropists may well have thought first and foremost of doing good, but a host of other constituents had even more practical considerations in mind. The part that the Chicago Visitation and Aid Society play in the passage of the Illinois Juvenile Court Act exemplified this process at work. No one person was more diligent in promoting the movement than T.D. Hurley, and Hurley was in charge of this Catholic child-caring organization. From Hurley's perspective the Society was too weak in authority. It would discover cases of parents who were not treating their children well, but there was little that it could then do. The juvenile court, he

believed, would expand his agency's control. The court would not be bound by legalisms. It would act in the best interest of the child--and in Hurley's terms that meant giving the Society more authority and the parents less.

Many superintendents of institutions for deviant or dependent children also looked to the juvenile court to substantiate their own authority. Since the court was free of the technical need to find a child guilty in a criminal sense, it could dispatch the child at its discretion to the kind of institution that it believed appropriate. To the superintendents this kind of commitment power promised to clarify and simplify their authority. A fair number of administrators from within the criminal justice system also joined the coalition. Police officers often believed that the juvenile court would keep delinquents off the streets for a longer period of time than a commitment to the traditional house of refuge. And at least one district attorney quite frankly supported juvenile court because it would reduce substantially the number of cases that his staff had to handle. A few police representatives and some civil libertarians did object to the authority of the courts. But on the whole their opposition was weak and limited, incapable of standing out against the coalition for reform.

## VII. Dispensing Juvenile Justice

However straightforward the task of defining what a juvenile court should do, the differences among juvenile courts as established were enormous. Practically no two courtrooms, let alone any two states, followed identical procedures. Many jurisdictions did make juvenile courts chancery courts, enabling them to adopt informal rules of procedure. An important minority, however, including Massachusetts, New York and Washington, D.C., kept the juvenile courts as criminal courts. The scope of court action also differed markedly from place to place. All courts had responsibility for cases of delinquency and many of them handled cases of neglect, but some juvenile courts also administered widows' pensions or adoption laws or truancy laws, or cases of adults contributing to the delinquency of minors or commitments of minors for insanity or retardation. So too, in some areas, the juvenile court was nothing other than the adult criminal court sitting for a special session. In others, it was a court apart, with its own building, and specially appointed staff. Thus, it is far more accurate to talk not of <u>the</u> juvenile court, but of many juvenile courts.

Like many other Progressive innovations, the juvenile court did take root more firmly in the city than in rural areas. The more urban the location, the more likely that the juvenile court would be a "special court," that is, presided over by its own particular judge with its own facilities and

probation services. But behind the major differences among juvenile courts were not demographic factors but something more integral to the reform design itself. Given the significance of the judicial discretion to the reform blueprint, this grant of authority actually meant that juvenile courts would be as different one from the other as judges were different one from the other. In fact, the various structures that Progressives expected would guide, although not fetter, the discretion of the judge, were never able to take hold. The result was a system that represented the rule of men and not of law, that made the judge's personality the critical element in determining the character of his own particular courtroom.

Let it be clear that every judge does enjoy some measure of autonomy. In adult criminal courts, however, the personality of the judge is restrained by procedural rules which impose a marked degree of uniformity. But this did not hold true in the Progressive juvenile courts. Without set rules, without fixed guidelines, the court quite literally had the delinquent at its mercy. Put another way, the personality of the juvenile court judge assumed an altogether novel significance. One indication of this fact is the remarkable prominence of a number of juvenile court judges in the Progressive period. They were in a real sense personalities. Ben Lindsey of the Denver Juvenile Court was

only the most notable case. To Progressives, the names of Charles Hoffman, Julian Mack, and Merritt Pinckney, were important ones. By the same token, contemporary investigators of juvenile courts devoted inordinate attention to the character of the presiding judge. When W.I. Thomas reported on the workings of the Cincinnati juvenile court, much of his attention went to the character of Judge Hoffman. Another investigator of child welfare practices in Pennsylvania discovered that every county had a different kind of judge who followed a different kind of method.

The Progressives had not anticipated such diversity, or intended to build up a cult of judicial personality. In their design, a highly trained probation staff in collaboration with psychiatric clinics would guide judicial decisions. Of course there would be differences in dispositions among delinquents who had committed the same act--but these differences would reflect the individual quality of each case, not the idiosyncrasies of the judge. Once again, however, reformers' expectations and the realities of implementation diverged. Many courts lacked the supporting services of clinics and trained probation officers that reformers demanded. Moreover, probation staff were so inadequately prepared that it was the probation officer's common sense or the judge's common sense that prevailed--and in either case, instinct was not enough to insure consistency among hundreds

of courts. Taken together, these considerations meant that judges were, in the end, very much on their own.

There was no need to rehearse at length all the failings of juvenile probation. Suffice it to say, that whether one is talking about pre-sentence reports or post-sentence supervision, conditions were substantially the same as those already described in adult probation. As for the psychiatric clinics, they operated in only the largest of cities and even there they did not manage to exert much influence on court proceedings. At best, the clinics offered labels, not prescriptions for treatment. The Progressives' expectation that psychiatric counseling would guide juvenile court decisions was not at all realized.

The ways that juvenile court judges exercised their open-ended authority illuminates the second critical characteristic of juvenile justice; the Progressive organization was far more interventionist and extensive in its reach than traditional courts had been. The discretion that judges enjoyed in procedural terms was matched by the latitude that they enjoyed in substantive terms, in the types of cases they considered and the sentences they passed. Taken together, these two features gave the administration of juvenile justice an awesome quality. Judicial authority had both a novel autonomy and scope--which meant that the system was not only unpredictable, but powerful.

Although there are substantial methodological problems with any generalization about court dispositions, it does appear that probation was more often a substitute for dismissal of cases than for commitment to a training school. Probation was more typically used instead of a milder sentence, not a more rigorous one. In many cities which used probation frequently, as Columbus, or Indianapolis, dismissal was a rare occurrence. Conversely, in Buffalo and San Francisco, a high percentage of dismissals went together with a low percentage of probation. Moreover, comparing juvenile courts with earlier police courts, again it turns out that police courts used dismissals much more typically; it was the juvenile courts that had more frequent resort to probation.

So too, the juvenile court did not put the training schools out of business. Census statistics on juvenile institutions point very much in the other direction. Between 1923 and 1933, the public juvenile reformatory population rose (from 25,251 to 30,496, or from 22.8 per 100,000 of the population to 24.4). And so did the number of annual juvenile court commitments (from 17,296 to 25,329, or from 15.5 per 100,000 to 20.2). Thus, the link between the juvenile court and the training school was a close one.

Did the institutions live up to the courts' promise not to punish but to treat the juvenile offender? Were the courts' claims at all accurate? In many ways, a verdict

on the way the court functioned must take into account the quality of the training schools."

It is clear that juvenile institutions were very much on the defensive in the Progressive era. They were often accused of being too mechanical in their discipline, too inattentive to individual cases. The institutions themselves did try to counter these charges by altering the nature of their routines. They claimed to be "training schools," not, any longer, houses of refuge. Education of an academic as well as vocational sort was to stand at the heart of the program. The institutions would also follow a cottage, not a cell block or dormitory design. So too, they would incorporate the psychiatric techniques of the new child guidance clinics. As one social worker phrased it, juvenile institutions "will not be the dumping ground of the community's failures," but "a sanitarium for sick personality, a definite and constructive link in what should be an endless chain of service to maladjusted childhood."

The descent from the language of juvenile institutions to the reality of conditions is precipitous. No matter how frequently judges insisted that confinement was for treatment, training schools did not fulfill this claim. "When is a school not a school?" asked one reformatory superintendent. "When it is a school for delinquents." Reformatories were

not capable of administering a grade school or high school curriculum and they did no better at vocational training. As one observer reported: "Most of the large institutions have what they call trades departments, and use them mainly for repair and construction work about the plants....This gives a small amount of instruction while utilizing the labor of the inmates in reducing the expenses of the institution." Or, as the verdict of those who studied conditions at St. Charles, Illinois, put it: "Trade training of a quality which fits boys for self-maintenance is non-existent."

The cottages were almost invariably overcrowded with a staff that was at once undertrained and overworked. They bore no resemblance to a normal family life. And for child guidance, the most important service that institutional psychologists or psychiatrists performed was mental testing. IQ tests were prevalent. But there was really little that the training schools could do with the results. Classification was an absurdity when cottages were overcrowded and organized essentially by age and size. Thus, one answer to the question, "What good has psychiatry been in an institution for delinquents?" was accurately enough: "To start surveys; to give us technical diagnoses and work out more and more elaborate records which no one uses."

Not only did institutions fail to do good--they frequently did harm. Again, records of discipline and punish-

ment are difficult to come by and are essentially incomplete. Yet training schools do appear to be, in a phrase, prison-like. There were frequent reports of homosexual rape. When one examines lists of infractions for which inmates were punished, sexual offenses of all sorts were invariably among the leading three or four causes. So too, it was the rare inmate who escaped punishment from the staff. A national survey of 751 boys discharged from training schools revealed that only 55 of them had records that were free of disciplinary action. And training schools, like prisons, did have final resort to disciplinary or segregation cottages that were only in minimal ways different than the "hole." Finally, institutions had recourse to corporal punishment. A good number of superintendents foreswore its use, but others frankly endorsed it--and even where it was officially prohibited, it may well have had a flourishing underground life. Austin MacCormick's verdict on the Michigan Boys' Vocational School can stand as a general conclusion: MacCormick found "an emphasis on repression and regimentation, enforcement of silence rules more rigid than those prevailing in most prisons...which effectively destroy any homelike atmosphere...and serve only to teach conformity to a mode of life that will not be found anywhere in the free world."

Why did such dismal conditions continue to exist? How are we to explain the defects of the programs and their

perpetuation? Again, there were budgetary shortages, and the social sciences and psychological professions could not provide substantive programs of effective treatment. But here too, the issue was more complicated, and brings us again to the difficulty, perhaps impossibility, of at once carrying out a custodial and rehabilitative program. "The big drive in the ordinary institution," noted one psychiatrist, "is to keep inmates from escaping and to keep them in a state where discipline may be maintained." Hence, "There is usually no treatment that we would recognize as such. There is no thought out concept of training." Why, then, were the cottages anything but homelike? Because the inmates had to be kept under firm control, because the fear of disorder and escape was the nightmare that dominated the institution. Considerations of custody crowded out all others. If schooling was inadequate and staff uneducated, no matter; the critical consideration was to keep the inmates confined. The point is still more relevant when one turns to discipline. Every sanction had to have its back-up sanction (until punishment degenerated into cruelty), because institutional order had to be maintained. Accordingly, the worst punishments went to those who tried to escape. For them, weeks of solitary confinement or corporal punishments were appropriate to insure that inmates would not make such attempts again.

With this perspective, the reasons for the persistence

of the juvenile courts and the juvenile institutions became clear. The judges, for their part, were fully satisfied with their discretionary authority. They could give probation to anyone that they wished to spare the rigors of incarceration; at the same time, they had no quarrel with incarceration, whatever its inadequacies, since they could reserve it for the hardcore cases of whom they despaired. Would that the institutions were better--but nevertheless they were appropriate for managing the difficult case. In fact, judges' very willingness to consider incarceration a "last resort," became a primary source of justification for it. When judges were prepared to forego probation and impose incarceration, the disposition had to be proper. And if superintendents could not make very much treatment progress with such tough cases, they were not to blame. The superintendents actually had the best of both worlds--the justification of rehabilitation and innumerable excuses for not delivering it. As for the reformers, they were aware of the deficiencies of both the court and the institutions and yet, as in so many other instances, they preferred to work for its improvement, as opposed to questioning their own premises. However grim the conditions in the state training schools, the delinquent was better off than in a state prison. However unsatisfactory the juvenile court, the delinquent was better off than in an adult court. Reformers also believed that their programs had never been given a fair test. Failures reflected not faulty conceptual-

ization, but faulty implementation. As they viewed it, "Society will continue to 'try out' humanitarian theories," or else "medieval darkness will again seep our courts and institutions." In the end, all reformers could offer was a plea to do more of the same in better ways. They were never able to step back and question the system as a whole.

## VIII. The Fate of the Mental Hygiene Movement

To appreciate just how powerful were the dynamics we have been exploring in the area of delinquency and criminality, it is useful to examine, however briefly, developments in mental health. Just as reformers revised traditional views and practices toward offenders, so they altered ideas and procedures toward the mentally ill. Here too, the notion was to return the mentally ill to the community, and here too, a considerable gap separated rhetoric from reality.

It was Adolph Meyer and a group of supporting psychiatrists who turned "away from mere reform of psychiatric hospitals" toward a novel mental hygiene program. Meyer was in intellectual style very much like William Healy. He, too, expressed his devotion to "the facts of the case." Indeed, in Meyer's terms, there was something "natural" about facts and "the first step in the course of psychology for medical students is to restore in them the course of common sense." This confidence in the value of a fact orientation reflected his definition of the roots of insanity, most typically, as the product of "maladaptation.' With this approach, announced Meyer, "psychiatry is no longer committed to being our brother's keeper, but it has its definite work with each patient...in the thorough study of all the integrative factors of each individual patient's health."

All of these ingredients, from the devotion to the facts of the case to the centrality of the concept of adjustment, led Meyer to his significant attempt to transform institutional

psychiatry into "civic medicine." Meyer was among the first to insist that psychiatry go out from behind the asylum walls. To keep the patient isolated was futile, both in terms of diagnosis and treatment. The problems did not rest exclusively with the patient; the damaging influences within the community had to be identified and eliminated. In brief, the links between community psychiatry, probation and parole, and the juvenile court were all very strong.

Meyer's formulation of the etiology of insanity won rapid approval among professionals and lay reformers. Progressives were receptive to a definition of the origins of insanity that was so consistent with their explanations for crime. A host of other psychiatrists were equally impatient with the narrow custodial operation of the state asylums. And they were also dissatisfied with the lack of progress made in pathology laboratories. The caretaking approach of the medical superintendent and the materialist stance of the neurologist both seemed at a dead-end, provoking almost a desperate search for new approaches to the problem of insanity. Meyer's work was welcome because it was active and energetic, giving psychiatrists a new program to design and implement.

At the core of the new program was the psychiatric clinic, often inseparable from the psychopathic hospital. The clinic was to represent an alternative to incarceration for the mentally ill, now able to treat patients within the community who before could only have received care inside an asylum.

Because the new clinics would be convenient to visit, and without inherited stigma, patients would seek assistance immediately after the onset of their symptoms and psychiatrists would therefore be far more able to effect cures. The clinics would also provide in-patient care as part of the psychopathic hospital service. Some patients might require short-term confinement, a respite of a few weeks, and the in-patient service would provide it. Finally, the clinics would also serve as training and teaching centers, both for psychiatrists who would learn the new techniques, and for the community-at-large, who would be educated to the best ways of maintaining mental hygiene and preventing illness.

The groups that affiliated themselves with this program were as broadly based and diverse as those who came to support innovations in criminal justice. Meyer himself believed that general practitioners "were glad to be rid of the neurotic," pleased to be able to refer them to the new clinic. Psychiatrists and teachers in medical schools obviously identified with Meyer and believed that clinics would represent progress for the field. Further, Meyer's clinics seemed to promise for adults what William Healy and others were trying to do for children. So once again the roster of supporters swelled.

The new clinics also promised to deliver another kind of service: after-care for those discharged from mental hospitals. Here again the resemblance to developments in criminal justice, to parole, is clear. Just as the inmates released from a penitentiary would benefit from after-care, so too would the

mentally ill. In fact, both in mental illness and criminal justice, the term "parole" was used, parole for inmates, parole for patients. The program attracted a popular following. The emerging profession of social work avidly supported it. Indeed, the National Committee for Mental Hygiene made after-care one of the most important planks in its reform platform.

Only one group might consider its interests threatened by the new doctrine and that was, of course, the medical superintendents. Those in charge of the large state asylums certainly did bear the brunt of the attack from Meyer and his supporters. But neither Meyer nor anyone else looked to close down the institutions. Asylums were to be upgraded, not eliminated. In fact, reformers gave a new legitimacy to the institutions. In effect, they offered the medical superintendents two options. They could transform the state asylums into psychopathic hospitals, join the mental hygiene movement as full partners. Or, they could administer frankly custodial institutions, which were to serve as back-up places for the new hospitals, offering care to the chronic and untreatable. Not surprisingly, then, medical superintendents on the whole responded favorably to the new message. Just as wardens fit themselves into the Progressive program, so did they. And with this kind of alliance, the new views on the treatment of mental illness seemed ready to capture public policy.

When one measures day-to-day realities by Progressive ambitions, the results in the field of mental hygiene are as disappointing as in criminal justice. In the period 1900-1940, neither the mentally ill nor their doctors returned to the community. The psychopathic hospitals became not places of treatment but places of diagnosis. In effect, they had more in common with the reception center at Sing-Sing than with Massachusetts General Hospital. Because of the nature of the commitment laws, it became easier to send all kinds of patients, the treatable as well as the untreatable, to the psychopathic hospitals and thus overloaded, the psychopathic hospitals became a stop on the line to the state mental hospital. Insofar as the state mental hospitals themselves were concerned, their names did change. One after another, "asylums for the insane" gave way to "state hospitals." But changes in the signposts did not reflect changes in the reality of administration. The state hospital, like the asylum before it, was caught in a cycle from which it could not escape. The routine, almost without exception, amounted to custodial care for the chronic patients, which meant that for the most part these institutions received only chronic patients, which in turn meant that the routine was fitted to the chronic patient, and the cycle commenced all over again. Under these circumstances, to sort out cause from effect, to weigh the impact of overcrowding as against the state of psychiatric knowledge as against the quality of the institutional stance, is not only very difficult, but relatively unimportant. The critical

point is that every influence that bore on the functioning of the state hospitals at once promoted and reinforced a custodial operation.

One aspect of mental hospital life can represent the system as a whole: that which passed for occupational theory. Ostensibly "that occupation of the insane has a therapeutic value admits of no argument." Mental illness, as Adolph Meyer himself suggested, frequently reflected "a disorganization of habits" and hence, "occupation...is at the bottom of the success of the treatment of the insane." Yet when one looks at occupational therapy in practice, it turns out that therapy took second place to institutional maintenance. The labor of patients was essential to the operation of the hospital. Men worked the farm and did repair work on clothing, shoes and furniture; women did the knitting and repair work on clothing. The jobs were obviously chosen not for their therapeutic value but because they fit institutional needs. There was no effort to match case histories to assignments, no attempt to train inmates for post-institutional employment. The managers' very ability to confuse laundry work with therapy, to define farming and sewing as rehabilitative, indicates just how crude the state of treatment was and just how custodial mental hospitals continued to be.

The custodial quality of the state hospitals not only undercut the mental hygiene program for institutional care, but also thwarted its ambitions to extend the reach of treatment and the principles of prevention into the community.

It was the state hospital that continued to receive the bulk of public money and its own needs (by reasons of budget scarcity, not necessarily selfishness) could barely be satisfied by appropriations; there were little funds left over for out-patient care. Hospital superintendents were not going to sacrifice their own institutional requirements in order to fulfill another mandate. Hence, patients on parole did not receive very much more assistance than ex-prisoners on parole. In both instances, the staffs were undertrained and overworked so that those discharged from institutions were very much on their own. The social worker was as unlikely to prevent recurring illness as the parole officer was to prevent recidivism.

Finally, it is not difficult to understand how failure and persistence were inseparably joined in the mental hospital. The custodial character of the program made mental hygiene precepts irrelevant and at the same time gave the institutions an ongoing function. The state hospitals were the dumping grounds for the cases that nobody else wanted--the senile, the alcoholic, and the hopelessly schizophrenic. It was a thankless task, but one that did provide the mental hospitals with a purpose. So once again, a rhetoric of treatment gave legitimacy to an institutional operation, and the reality of custody supplied its purpose.

## IX. Conclusion

From this analysis, three closing lines of argument emerge. In the first instance, this research makes clear that the underlying assumptions of the Progressive programs no longer appear valid. We are in rebellion today against inherited procedures because their premises seem inappropriate. Unlike our predecessors, we are not confident that we understand the roots of deviant behavior. In fact, we are very skeptical about anyone's design for reforming the deviant, not only because of findings that rehabilitation has not often occurred, but because we lack the conceptual tools that would justify such a confidence. Even more important, unlike our Progressive predecessors, we are far less willing to trust to the discretionary attitude of the state. The earlier belief in a harmony of interests no longer seems to many observers to be appropriate. From all points on the political spectrum, we are now witnessing a reaction against discretion, an effort to return to a focus on the overt "act," not the "state of mind," of the offender. These particular points are only symptomatic of a broader judgment that the power of the state cannot be exercised in a way that will satisfy all claimants. The historical record does not point us toward solutions that should be substituted in place of inherited wisdom. But it does make clear just how far we have travelled from the paths of our predecessors. For better or for worse, the Progressive synthesis cannot be restored.

Second, this analysis of the fate of alternatives to incarceration demonstrates that in no easy way can alternatives to institutions coexist with institutions. The centrality of the prison gave little room to parole. In mental health, too, the asylums never allowed alternative programs to grow up. Policymakers do confront something that is closer to an "either-or" approach. So long as they continue to fund institutions as their first priority, as long as they continue to think of incarceration as a primary goal of the system, to that degree will they probably be unable to implement alternatives. A commitment to alternatives to incarceration will demand a thorough-going reversal of priorities in social policy.

Third, and finally, the historical record strongly suggests the difficulty of administering a program that is at once custodial and rehabilitative. Just as institutions and alternatives do not mix well together, so guarding and helping conflict one with the other. Whether one is discussing probation, or parole, or the juvenile court, to join assistance to surveillance is to create a tension that cannot persist and will be far more likely to be resolved on the side of surveillance. Indeed, the historical record suggests an even worse dilemma: it may be even more difficult than we have imagined to run a custodial program that is at once secure and humane. The seemingly omnipresent need for a more coercive back-up sanction may make it difficult to run a <u>system</u> which is satisfactory in all of its aspects.

It may be that the ultimate function of history to social policy is to prompt questions and raise consciousness.

Those who are looking for immediate answers or detailed blueprints may find themselves somewhat impatient with this kind of disciplinary approach. Nevertheless, it should also be clear that in this field, above all others, a sensitivity to past failures may constitute the beginning of wisdom. Finally, a historical approach does help to liberate our imagination to experimentation and does help to free us from the bonds of the past. In this sense, this report, indeed, this research, represents an effort to promote a spirit of innovation.

## X. A NOTE ON THE SOURCES

The sources for historical study are of many types and it would be useful to indicate the variety of materials that are available for research.

Institutions do keep and publish important records. They are by no means complete and they are not altogether reliable; nevertheless they do highlight many of the critical developments. Thus, the records of particular prisons and state systems must be consulted. Among those that were particularly useful here were the records in the states of Massachusetts, New York, Michigan, Minnesota, Oklahoma, and California. Moreover, the annual reports of the institutions, published for the legislatures, despite their formal and often self-serving quality, are a source that if properly used can be of great value. These are widely available, but the Library of Congress has an especially rich collection.

Second, the criminal justice system in the period 1890-1940 was the object of frequent investigations, both by state committees and reform organizations. These materials are very revealing of the state of incarceration and the fate of the proposed alternatives. To indicate only a few of the major investigations examined:

National Commission on Law Observance and Enforcement, Report on Penal Institutions, Probation and Parole (Washington, D.C., 1931, George Wickersham, chairman.)

Attorney General's Survey of Release Procedures (4 volumes, through 1940, Washington, D.C.).

Hearings and Publications of the New York Crime Commission, through the late 1920's and early 1930's.

Clair Wilcox, The Parole of Adults from the State Penal Institutions in Pennsylvania (Phila., 1927).

Andrew Bruce, et al., The Workings of the Indeterminate Sentence Laws and the Parole System in Illinois (Report to the Legislature, August 16, 1928).

Massachusetts Commission on Probation, Report, March 15, 1924. State of New York, Proceedings of the Governor's Conference on Crime, the Criminal and Society, September 30-October 3, 1935 (Albany, 1935).

Further, the Attorney General's Survey during the Depression was, in part, an employment project. Accordingly, it hired scores of researchers to visit and to fill out elaborate schedules on every state prison, as well as on some court probation operations. These records have been preserved and they constitute the best single collection of materials on the subject of incarceration in the twentieth century. They helped to provide this research with an enormous amount of data for analysis.

Third, the ideological underpinnings of the Progressive orientation to criminal justice and delinquency are well developed in a host of publications. See, for example, the writings of William Healy, Adolph Meyer, Sheldon Glueck, as

well as Austin MacCormick, Thomas Travis, Benjamin Lindsey, Homer Folks, Burdette Lewis, Augusta Brenner, Hastings Hart, Edwin Sutherland, Thorstin Sellin, Thomas Osborne, and Frank Tannenbaum. Of great importance too, are the publications of various professional and reform associations. Of especial value are the Annals of the American Academy of Political and Social Science, the annual volumes of the National Probation Association, the American Prison Association, and Charities and Correction.

The periodical literature for the period 1900-1940 is particularly rich. Consult, for example, the Journal of Criminal Law and Criminology, Survey, Charities, and Mental Hygiene. In the field of delinquency, the publication of the Juvenile Court Record is of major significance, as are the highly detailed and informative studies put out under the auspices of the Children's Bureau and the Bureau of the Census.

Although the history of incarceration and its alternatives in the twentieth century is only beginning to concern historians, some important studies have appeared. See, for example, the work of Blake McKelvey, Jack Holl, Sanford Fox, Anthony Platt, Walter Trattner, Robert Mennel, and Marc Carlton. In mental hygiene, the guide remains Albert Deutsch, The Mentally Ill in America (New York, 1937, 1949).

A full presentation of the research and analysis here as well as complete documentation for it will appear shortly in book form, to be published by Little, Brown and Company.



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