

1899.

WESTERN AUSTRALIA.

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R E P O R T

OF THE

C O M M I S S I O N

*Appointed to inquire into the*

PENAL SYSTEM OF THE COLONY.

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*Presented to both Houses of Parliament by His Excellency's Command.*

PERTH:

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1899.

No. 16.

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## COMMISSION

WESTERN AUSTRALIA, }  
TO WIT.

GERARD SMITH.

By His Excellency Lieut.-Colonel Sir GERARD SMITH, Knight Commander of the Most Distinguished Order of Saint Michael and Saint George, Governor and Commander-in-Chief in and over the Colony of Western Australia and its Dependencies, &c., &c., &c.

To FRANK CRAIG, Esquire; JAMES GALLOP, Esquire; ADAM JAMESON, Esquire; HENRY J. LOTZ, Esquire; EDWARD WILLIAM MAYHEW, Esquire; MATTHEW LEWIS MOSS, Esquire; HORACE GEORGE STIRLING, Esquire; HARRY PAGE WOODWARD, Esquire.

**W**HEREAS it is desirable that a Commission be appointed to inquire into the existing condition of the Penal System of Western Australia, and to report upon the method now in use for the punishment of criminals, their classification, the remission of sentences, and the sanitary condition of Fremantle Gaol, as well as to inquire into all contracts for supplies of food and other materials for use in the said Gaol:

Now, THEREFORE, I, Lieut.-Colonel Sir GERARD SMITH, K.C.M.G., Governor as aforesaid, do hereby appoint you, the said Frank Craig, James Gallop, Adam Jameson, Henry J. Lotz, Edward William Mayhew, Matthew Lewis Moss, Horace George Stirling, and Harry Page Woodward, to be Royal Commissioners for the purpose aforesaid;

AND I DO HEREBY desire and request that you do, as soon as the same can conveniently be done (using all diligence), report to me, in writing, your proceedings in virtue of this Commission;

AND I DO APPOINT the said Adam Jameson to be Chairman of the said Commissioners.

Given at Perth this 7th day of September, in the year of our Lord 1898.

By Command of His Excellency the Governor,

G. RANDELL,  
Colonial Secretary.

GOD SAVE THE QUEEN !!!

# PENAL COMMISSION.

## FIRST PROGRESS REPORT.

To

His Excellency Lieutenant-Colonel Sir Gerard Smith, Knight Commander of the Most Distinguished Order of St. Michael and St. George, Governor and Commander-in-Chief in and over the Colony of Western Australia and its Dependencies, etc., etc., etc.

Sir,—

We, the Commissioners, appointed by Commission dated the seventh day of September, 1898, to enquire into the existing conditions of the Penal System of Western Australia and to report upon the method now in use for the punishment of criminals, their classification, the remission of sentences, and the sanitary condition of Fremantle Gaol, as well as to enquire into all contracts for supplies of food and other materials for use in the said Gaol, have the honor to respectfully submit our First Progress Report as follows:—

### PRELIMINARY WORK OF THE COMMISSION.

Your Commissioners deemed it advisable at the outset to secure all the evidence obtainable from the prisoners in Gaol at Fremantle. For this purpose they caused it to be notified that every prisoner who cared to do so might present himself or herself for examination, and tender such evidence as the prisoner might deem fit, whether relating to personal grounds of complaint or to suggestions for the general welfare of prisoners. Of this opportunity an unexpectedly large proportion of the inmates of the Prison availed themselves, with the result that the Commissioners were enabled to procure a great deal of valuable evidence, which will serve as the groundwork for their future investigations into the penal system of the colony. That evidence is now being printed, and will, in due course, be presented to your Excellency. Your Commissioners have found it convenient to follow the general lines of examination adopted by a Queensland Commission appointed for a somewhat similar purpose. Due regard has, however, been had by them to the special circumstances of this province, and wherever prisoners made out what seemed a reasonably strong *prima-facie* case of injustice, or preferred any complaint of harsh treatment subsequent to the arrest, your Commissioners gave the complainants every latitude for the purpose of enabling them to state their case.

The Fremantle Gaol is structurally in no way adapted to meet the very varied purposes which it is now required to serve. The sanitary arrangements are in many particulars defective, and much behind the hygienic requirements of the present day, while the general plan of the prison is such as to needlessly increase the work of supervision and of maintaining discipline among the inmates.

The air space in the cells, being only one-third of the space allotted at, e.g., Pentridge or Wormwood Scrubs, is too limited under any circumstances for the health of the prisoners, particularly in the case of youths who spend 20 or more hours out of every 24 in these cells in a condition of enforced idleness. The ill-effects of the want of space are not so much felt by the adult prisoners, owing to a comparatively large proportion of their time being spent in the open air, under the associated system.

The mode of ventilation of the cells is extremely bad. A strong upward draught from the floor makes itself constantly and very unpleasantly felt, and naturally produces injurious effects upon the health of the prisoners.

Your Commissioners propose in a later report to submit some detailed suggestions for the structural adaptation and improvement of the Gaol buildings.

Meanwhile, in view of the separate system of treatment which the Commissioners propose to recommend, under which prisoners will be provided with work to do in their own cells, under competent instructors, it will be necessary, as a preliminary, to at least double the air space by knocking two cells into one. This will reduce the accommodation, immediately available by one-half, but your Commissioners believe that the circumstances, which, during the last few years have accidentally swelled the number of inmates by a foreign criminal population, are not likely to recur. It is satisfactory also to note that the number of criminals for whom accommodation has to be provided, is both steadily and rapidly diminishing, while the Commissioners confidently hope that the suggestions as a whole, which they submit, will permanently reduce the number of prisoners, and lessen the probability of their future return to prison after release.

### CLASSIFICATION.

There are in Fremantle Gaol a vast variety of prisoners, these comprise among others:—

- (a) Trial prisoners, i.e., prisoners awaiting trial.
- (b) Civil offenders—debtors, etc.
- (c) Vagrants.
- (d) Lunatics whose mental condition is under observation.
- (e) Lunatics not under special observation, but who are persons of weak intellect, undergoing imprisonment for some breach of the laws.
- (f) Imperial convicts who, having been released on ticket-of-leave, have subsequently been re-convicted.
- (g) Colonial prisoners undergoing penal servitude.
- (h) Local prisoners serving sentences up to two years, with or without hard labor.
- (i) Youthful offenders.

To these may be added such sub-divisions as are created by sex, nationality, creed, and language. For instance, there are a number of Mahommedans, mostly of Asiatic or African origin.

## DIFFICULTY OF CLASSIFICATION.

No attempt has hitherto been made at Fremantle to classify these different kinds of prisoners. Without some kind of classification, discipline is impossible, and it is therefore not surprising to learn that the only code of rules and regulations which is supposed to guide the officers and prisoners is systematically disregarded by both, for the simple reason that it is wholly inapplicable to existing circumstances. It was originally framed to meet conditions which no longer exist, so far as Fremantle Gaol is concerned.

For the purpose of actual classification, regard must be had not merely to these sub-divisions, but to various gradations in the nature of the offences for which prisoners have been convicted.

It is a moot point whether the classification of prisoners should, as in some countries, follow strictly the period of incarceration, and the number of previous convictions, or, as in other countries, be determined by the nature of the offence.

On the whole, the Commissioners are of opinion that classification should follow the nature of the offence rather than the term of the sentence, thus grouping together for the purpose of prison treatment, criminals who commit the same class of crime, rather than those who have been sentenced for similar periods. This subject it is proposed to deal with more fully in a subsequent report, when your Commissioners are in possession of more detailed information as to the actual procedure in other countries, which have endeavored to bring themselves into line with the latest teachings of criminology.

## THE SEPARATE SYSTEM.

The first six months of imprisonment in every case should be strictly on the separate system. Whilst undergoing separate treatment, no prisoner should be allowed any communication whatever with his fellow inmates. After six months separate treatment, prisoners whose conduct has been good should be classified in such associated groups as, in the circumstances of the prison, and the character of the work to be done, may be deemed convenient.

Of course the effect of the separate system being greatly to increase the severity of the punishment inflicted, regard must be had to this fact in the sentence awarded. The result must inevitably be to decrease the burden thrown upon taxpayers for the maintenance of prisoners.

## EMPLOYMENT OF PRISONERS.

There is a very common prejudice against the employment of prisoners on remunerative work, on the ground of the supposed conflict of interests between prison and free labor. Your Commissioners are, however, of opinion that with a little attention to the class of industries selected for the occupation of prisoners, there need be no apprehension whatever on this score, so far as Western Australia is concerned.

The labor of the prisoners should, in the first place, be almost, if not entirely, directed to the supply of the wants of the various Government departments. For instance, it is not at all probable that the exertions of the whole of our prisoners would be sufficient to meet the wants of the different Government departments in the matter of mats alone for offices and railway carriages. It may be interesting here to note that while many people theoretically object to the manufacture of such articles as mats and brooms by our prison labor, they view, with complacency, the importation of these articles, although they are notoriously the product of the prison labor of other countries.

A certain number of prisoners might also be profitably employed in gardening, and growing vegetables for prison use. At the present time a number of prisoners are always kept employed in the pump yard, turning a crank for the purpose of raising water. This work could be very much more economically done by means of the available steam plant of the prison. Each prisoner in the pump yard only does a few minutes actual work in each hour, the rest of his time being filled up by playing draughts, or by engagement in other forms of recreation.

This want of proper employment is one of the greatest evils of the prison system at Fremantle Gaol. It is inevitable that where men are not kept fully employed, they become demoralised, and on their release from Gaol, are less than ever fitted to become decent members of society.

## INSTRUCTION OF PRISONERS IN SEPARATE CONFINEMENT.

Where the separate system obtains in other countries no practical difficulty is found in teaching the prisoners in their own cells the work which they will be required to perform in those cells. For this purpose some of the warders have to act as instructors, and your Commissioners are glad to note that some of the officials now employed at Fremantle have the necessary qualification in this direction.

## ORIGIN OF THE SEPARATE SYSTEM.

The separate system had its origin in a report of a Select Committee of the House of Commons, dated as far back as the year 1832. That committee expressed the opinion that a prison "should offer the prospect of diminishing the amount of crime, either by the severity of its discipline or by reforming the morals of those committed to it. In both of these essential particulars many of the prisons are lamentably deficient. They hold out scarcely any terrors to criminals, while, from the impossibility of separating the most hardened malefactors from those who for the first time find themselves inmates of a Gaol, they tend to demoralise rather than to correct, all who are admitted within their walls. . . . Your Committee see no alternative but that of the separation of prisoners, both before and after trial. They therefore recommend that prisoners, when committed for trial, should be placed in light solitary sleeping cells, and provided with employment when practicable. . . . If your Committee felt any difficulty in a treatment approaching solitary confinement in the case of untried prisoners, they have none whatever in urging its adoption with reference to those hitherto sentenced to imprisonment, with or without hard labor."

## REMUNERATION OF PRISONERS.

Every prisoner should be placed in a position to earn something by his own industry in Gaol, to prevent his leaving the prison in a destitute condition, as is now too often the case. Your Commissioners recommend that for the labor of each month in Gaol each prisoner should be credited with a definite and fixed amount of money, to be placed at his disposal on his discharge. With the approval of the authorities

each prisoner should be permitted to dispose of a definite proportion of the amount at any time to his credit by way of remittances for the relief of relatives dependent upon him.

#### OFFENCES WITHIN THE GAOL.

Your Commissioners regard it as an altogether undesirable state of affairs that it should be possible for a man, originally sentenced for a short term of imprisonment, to be further imprisoned for offences within the Gaol for an indefinite period within public trial. Yet such is at present the case. In England no prisoner can have the original term of his sentence increased under any circumstances, except by order made in open court. No punishment, unless inflicted in open court, should take the form of lengthening the original term of sentence.

The present practice of lengthening the sentences of refractory prisoners at the discretion of the visiting magistrates is a very much more serious matter than might at first sight be supposed. With every desire to do abstract justice, it is obvious that the magistrates who are called upon to punish offences against prison discipline have a tendency to view with exceptional severity offences which the general public would not regard as deserving of particularly harsh treatment. For instance, to take the familiar case of an escapee. To the Gaol officials, and to those accustomed to deal with prisoners, the offence of escaping from Gaol presents itself as one of special enormity, and as one, therefore, calling for exceptionally severe punishment. Your Commissioners confess that they do not in any way share this view. The desire to regain liberty is a perfect natural one, and is generally possessed most keenly by the best class of prisoners, i.e., to men of whom the greatest hopes may be entertained that they will, when reformed, prove the most energetic and useful citizens. If a prisoner escapes, it is clearly the fault of those to whom he was committed for safe custody, and to punish the escapee by flogging, as has been done in some cases, or by 12 months in irons, as has been done in others, appears to the Commissioners to be merely a judicial brutality, not in accordance with the logical and merciful tendencies of our age and times.

#### DARK CELLS.

In the opinion of your Commissioners much too frequent use is made of the dark cells as a mode of punishment. This form of punishment is to many prisoners a cruel form of torture, whilst on others it admittedly produces little or no effect. For its results it depends entirely upon the temperament of the individual. Some authorities have laid it down that it presses most severely upon the educated or imaginative criminal, but this is very doubtful. Men of phlegmatic temperament seem to be very slightly, if at all, affected by it. They are much more readily brought to submission by a reduction in their dietary scale. In fact, it appears from the evidence that there are men who would rather do three days in the dark cell than work one hot day in the quarry. But on some men of excitable temperament, the effect is distressing, and almost maddening, whilst in every case there is the obvious danger of the visual organs being permanently and dangerously affected.

It is the practice at Fremantle for a sentence of three days' bread and water to carry with it as a matter of course "dark cells." We think this both unnecessary and undesirable. The punishment of "dark cells" should never be given, except on the written order of the authorities having power to inflict it.

It is the opinion of your Commissioners that there will be very few offences against the discipline of the Gaol rendering any such extreme measures as the "dark cell" necessary if their recommendations are carried out.

#### LONG SENTENCES.

Your Commissioners would direct attention to a fact which is perhaps not publicly known, that owing to an important alteration in the scale of remissions, the same nominal sentence to-day carries with it practically double the term of imprisonment that it would have done if given before the end of the year 1897.

On the general question of long sentences your Commissioners are of opinion that the sentences given by the courts are unduly long, regard being usually had to the length of the sentence rather than to the quality of the punishment inflicted. They are probably a legacy left to us by the old convict system of the colony. Long sentences fail altogether in their object, and press most severely on the taxpayers who are responsible for the maintenance of the prisoners during their incarceration. Beyond a certain point which is very soon reached, no sentence of imprisonment is either punitive or deterrent, although under a proper system it may possibly, in some circumstances, be reformatory. So far as the average prisoner is concerned, the worst part of the punishment is endured during the first few weeks of incarceration. If he feels any sense of humiliation or shame, that rapidly disappears by association with others who are all in like case. The deprivation of liberty presses hardly upon some—usually the very best of the prisoners—but after a time all persons, whether in Gaol or out of it, adapt themselves to their surroundings. In the result, the imprisonment at a very early date reaches the limit of the punitive stage. That in the majority of cases our system of punishment is neither deterrent nor reformatory is shown by the fact that "once a prisoner, always a prisoner," is the accepted axiom of the Gaol, and that the great majority find their way back again sooner or later.

#### PUNISHMENT SHOULD BE SHORT, SHARP, SEVERE, AND EFFECTIVE.

In every case it should be the object of the authorities to make the punishment sharp, severe, and effective, so that, while the first sentence shall be inflicted at the minimum of cost to the taxpayer, and the maximum of discomfort to the criminal, consistently with humanity, there shall be as little probability as possible of the taxpayer being called upon at an early date to pay for the second or third punishment of the same offender.

It is an undoubted hardship that an offender should be brought down from some remote part of the province for incarceration, and eventually be discharged at Fremantle without any means of returning to his home. To some extent this has been dealt with under the heading of "Remuneration of prisoners," but it is urged that every discharged prisoner who desires it should be provided with a second-class ticket to any point on the railway system.

Aliens, or prisoners hailing from the other colonies, should have every inducement and encouragement held out to them to return to their native homes. Your Commissioners have examined a number of prisoners, who come from India, Africa, or South America. They have rendered themselves subject to our laws, of whose principles they usually understand little or nothing. They are usually persons whose ethical code, if any, is not in consonance with Australian ideas, and their antecedents do not point to the likelihood of their ever becoming desirable Australian colonists.

Many of these men have the means to leave the country, and are extremely desirous of doing so. Your Commissioners do not consider that, in the interests of the community, it is at all desirable to discourage this wish. On the contrary, it would be wise policy to facilitate the departure of these persons by remitting the balances of their sentences conditionally on their leaving Western Australia.

#### TICKET-OF-LEAVE REGULATIONS.

Your Commissioners strongly urge the complete abolition of the "ticket" system. Every prisoner when he leaves the Gaol should be a free man.

These regulations are altogether obsolete, dating back from April 26, 1870, and are no longer in many ways adapted to the requirements of the colony. The ticket-of-leave system, as practised, throws far too much power into the hands of the police, and your Commissioners have evidence that this power is frequently indiscreetly used by officials, so as to make it almost impossible for a ticket-of-leave man to obtain employment in open competition with free labor.

#### TRIAL PRISONERS.

Trial prisoners are now brought to Fremantle and marched through the streets from the railway station to the prison handcuffed. This is an indignity to which no presumably innocent person should be subjected. A van ought to be provided for the conveyance of such prisoners, and the same vehicle might doubtless be utilised for the conveyance of any sentenced prisoners as well. As far as possible, all prisoners should be handed into custody at the Gaol at approximately some fixed hour of the day, so as to facilitate the work of inspection by the medical officer.

#### LUNATICS.

The practice of referring persons of weak mind to the Gaol for observation is one to be deprecated. Such persons should be sent to the Lunatic Asylum, and prisoners who, subsequent to their incarceration, develop symptoms of mental aberration should be similarly disposed of.

#### YOUTHFUL OFFENDERS.

There are now in the Fremantle Gaol about a dozen youths, whose ages range from 17 to 21 years. As far as the structural arrangements of the Gaol will permit these lads are kept separate from the other prisoners. But the punishment inflicted cannot in their case be said to be either sharp enough to make itself unpleasantly felt, or to be in any sense reformatory. There is no work on which they can profitably be employed, and, though for the most part they belong to a deplorably ignorant class, with the exception of one hour's schooling in each week no machinery is provided for their education. The fact is that the Fremantle Gaol is structurally not adapted for the reception of prisoners of this class. In this connection your Commissioners submit for consideration the desirableness of a careful review of the case of each individual youth upon its merits. There are some cases where, from the nature of the crime, it may be necessary that these youthful prisoners should be kept in close confinement; but in the majority of instances your Commissioners are of opinion that the interests of society would be best served and adequately protected by releasing the youths altogether, and placing them under a species of police supervision, such as is contemplated in the "Prevention of Crimes Act 1898."

For instance, to take a typical case, where nothing but the youth of the offenders calls for special sympathy, we would direct attention to the case of the two brothers Leader, who are undergoing sentences of seven and ten years respectively for an offence which, in England, is deemed to be adequately punished by a sentence of two years with hard labor. In such a case as this the only person really punished is the taxpayer, because he is called upon to support in unproductive idleness and for a long term of years two young fellows, who prior to their incarceration were able to earn and did earn excellent wages. As a matter of fact, these two boys up to the time of their trial were the main support of their widowed mother and younger brothers and sisters.

#### DIET.

As was perhaps only natural, almost every witness had something to say upon the subject of the prison food. The majority asserted that during the latter part of the year 1897 the food supplied was exceptionally bad in quality. Unless the whole of the evidence of the prisoners upon this point is to be disbelieved, there is no reason to doubt that this condition of things, although in a modified form, continued until quite recently. It is, nevertheless, generally admitted, even by the prisoners, that there is at the present time, no ground for complaint in the matter of the quantity or of the quality of the food supplied. Among the female prisoners no complaints have been made respecting the diet. The better or more careful cooking practicable among a small body of female prisoners has doubtless done much to lessen the probability of complaints as to the quality of the rations. A small minority of the male prisoners also—mostly short-sentence men, or new arrivals—found no fault with the food.

Your Commissioners will submit some suggestions on the whole subject of the food supply and the dietary scale when they have completed their examination of the Gaol officials and of the contractors for supplies. Meanwhile, they desire to record their opinion that it is altogether impracticable to adopt the same dietary scale—as is now attempted to be done—to the requirements of prisoners undergoing sentences which vary greatly in length. For the requirements of short-sentence men the quality and quantity of the food are of a higher standard than is necessary. On the other hand, there is too little variety in the food to meet the necessities of those who are compelled to eat nothing else for a long term of years. The inevitable result is that many of the long-sentence men develop dyspepsia in various aggravated forms, which, under a proper system of diet regime might be entirely avoided without any increased cost whatever, in fact, with economy to the State.

## INDIVIDUAL CASES OF PRISONERS.

In the course of the voluminous evidence taken by your Commissioners, a number of cases have transpired, which, in their opinion, deserve the consideration of the Executive for the purpose of the exercise of the Royal Prerogative of mercy. To some of these cases the attention of the Colonial Secretary has been incidentally called.

We have the honor to be,  
Your Excellency's most obedient, humble servants,

ADAM JAMESON (Chairman).  
FRANK CRAIG.  
JAMES GALLOP.  
HENRY LOTZ.  
E. W. MAYHEW.  
M. L. MOSS.  
HORACE G. STIRLING.

Witness to the signatures of the Commissioners---

THOMAS HARRY,  
Secretary.

Dated at Perth this 23rd day of December, 1898.

## SECOND PROGRESS REPORT.

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To

His Excellency Lieutenant-Colonel Sir Gerard Smith, Knight Commander of the Most Distinguished Order of Saint Michael and Saint George, Governor and Commander-in-Chief in and over the Colony of Western Australia and its Dependencies, etc., etc., etc.

Sir,—

We, the Commissioners, appointed by commission dated the 7th day of September, 1898, to enquire into the existing conditions of the penal system of Western Australia, and to report upon the method now in use for the punishment of criminals, their classification, the remission of sentences, and the sanitary condition of Fremantle Gaol, as well as to enquire into all contracts for supplies of food and other materials for use in the said Gaol, have the honor to submit our Second Progress Report as follows.—

### INDIVIDUAL CASES OF PRISONERS.

"In our First Progress Report, we intimated that there were certain individual cases of prisoners to which we desired to direct the attention of your Excellency. Some of these cases have been selected by us as typical of various classes of offenders, in regard to whom the kind of punishment inflicted does not seem to be the best suited for their offence. Others we have taken because of peculiar and special features connected with them, such as apparently undue severity in the sentences, or other circumstances which seem to point to the desirableness of a revision of the sentences inflicted.

"No. 10525.—OFFENCE AND SENTENCE.—Stealing from the person of a man unknown, five years.—This is a somewhat remarkable case. The prisoner was charged with assault and robbery. The charge of assault was withdrawn, and the prisoner was found guilty of robbery. The person alleged to have been robbed was not known to the Crown, and was not produced. Your Commissioners recommended the case of this prisoner to the Colonial Secretary for consideration, but the Attorney-General thought that his release 'would undermine the discipline of the Gaol.' Your Commissioners fail to see how the discipline of the Gaol would be affected by either the release or the detention of this prisoner. The only question for consideration in this case, as it seemed to us, was whether the prisoner would not have escaped conviction in the absence of a prosecutor, the person alleged to have been robbed, if the prisoner had been defended at his trial. The prisoner conducted his own defence with so little skill that he elicited the fact of previous convictions. The Attorney-General, in his minute 2562/98 speaks of the conviction as one for robbery with violence, but it was for robbery only. From the Crown Solicitor's remarks on the same document it is clear that the prisoner's undoubtedly bad previous record was the main element which led to his conviction. We have selected this as a typical case which opens up a very important point in practical penology, in regard to which there is room for much difference of opinion. Should the previous record of any prisoner have any weight at all at his trial? Theoretically it does not, as far as the jury is concerned; but if, as in this case, the evidence elicited established the fact of previous conviction, it is only natural that the jury should be affected by it, and lead to the conclusion that the prisoner must be guilty of the offence with which he is charged. The evidence is then less critically weighed than would be the case where the prisoner had no previous record. It may, in the interests of society, be desirable that an old offender should be thus handicapped, but we are nevertheless of opinion that every charge should be tried strictly on its own merits, and without any regard to the antecedents of the prisoner. Lord Coleridge went further, and laid it down as a first principle that in every ideal criminal code each offence should be punished by the infliction of the penalty provided for that offence, and without regard to any previous commission by the person convicted of an offence of similar character. In other words, the prisoner should not be specially punished because he has been punished before. On the contrary, he should, whether he, for instance, steals a watch for the first or twentieth time, pay the penalty for watch-stealing, neither more or less. Your Commissioners are not prepared to go quite as far as this, but would strongly advocate the formulation of a code which would prescribe the punishment for every class of offence in a manner which would lead to greater uniformity in sentences than now exists.

"No. 3376.—LARCENY, TWO YEARS.—This is a case which appears to require further investigation. The prisoner was found guilty by a jury at Coolgardie, but from a report of the proceedings, the verdict was arrived at only after considerable hesitation. The prisoner bore an excellent character up to the time of his conviction, the evidence against him being mainly that of a young girl who, it is urged on his behalf by certain petitioners, might easily have made a mistake as to the identification of a person whom she saw in the dark of the evening. The prisoner's own statement to the Commissioners is as follows:—"I was sentenced to two years for alleged larceny at Kalgoorlie. I had nothing to do with the robbery, and, had I the means to pay expenses for witnesses, could have proved an alibi beyond doubt, as, at the time of the robbery, I was away at Boulder City. The cause of my conviction was that I had thrown a bottle at a policeman named Anderson, who came sneaking about my place one night in the dark. I was charged with the assault, but discharged by the magistrate, who remarked that it served the policeman right, as he had no business on my premises. Anderson, however, threatened to "fit me," as he said, before long. Accordingly, I was charged with having stolen a cash-box from Hans Kinsman, and found guilty on the evidence of a little girl of 14, who swore that she saw me enter the window of the premises where the cash-box was. My lawyer was unwell on the day of the trial, and the Crown Prosecutor pressed the matter of my throwing the bottle at the policeman (Anderson), although it had nothing to do whatever with the alleged robbery. This prejudiced the jury. Since I have been in Gaol a policeman named Whelan has been to see me, and told me, in the presence of Acting Chief Warder Webster, that he knew that I was innocent, and that he also knew now who was guilty. He added that it was my own fault that I was in Gaol, as I should have told the police at the time who it was who committed the robbery. I had good reasons to know who it was, but I did not consider it necessary to express my suspicion concerning a man who was spending money freely at my place in the course of business. Was it my duty to tell the police that a man was at my place spending money freely, and that I did not think that he earned the money? I understand that Whelan is leaving the



police force, and that both he and Anderson know perfectly well who the real criminal was. I should like to have my innocence proved, but should be even more glad to get out of the colony. I have the means, or could get the funds in 24 hours, to return to my wife and two children in Tasmania. I have never been in gaol before. I have got a five years' character, which I produced in court. I was a mining laborer, and also worked as engine-cleaner for Mr. Hedges, the contractor. I was well known as a steady man among the contractors for railway work. On the occasion when Whelan saw me, Mr. Webster remarked that he could not properly hear all that Whelan was saying, and told him to speak up. Acting Chief Warder Webster, when examined by us, said:—'I remember Constable Whelan having an interview with No. 3378. I was present. I heard Whelan say, 'I will put that property all right for you. I am leaving the force. Something was said before that by Whelan, which I could not hear. He was talking in a confidential and low tone, and I told him to speak up.' The prisoner, commenting on this, said: 'What Acting Chief Warder Webster says is correct as to the words he heard. I understood him to mean that he would see me righted. He had previously, in a low tone, told me what I have said.' Prisoner No. 3504 stated in regard to the same matter: 'Whelan, a member of the police force, told me on one occasion that 3378 was innocent, and that he was coming down to visit him at the Gaol and tell him that he knew this. He added that he was sure that he could get No. 3378 out of the Gaol, and he would do his best with that object.'

"No. 10463.—LARCENY, TEN YEARS.—This is an Asiatic, who was brought to this colony under indenture. He received two cumulative sentences of five years each. The practical effect is to increase his term of incarceration by 40 per cent. beyond what it would have been under one sentence of 10 years. Section 24 of Act 61 Victoria, No. 27, prescribes the responsibilities of employers who indenture laborers of the prisoner's class. The superintendents of prisons throughout the colony should be required to notify to the Colonial Secretary whenever an indentured Asiatic is about to be released from custody in order that the provisions of the Act above quoted may be enforced. This sentence strikes us, in the whole circumstances of the case, as being a very severe one.

"No. 2920.—In reference to this case, in the course of a letter to the Colonial Secretary, we said:—'The Commissioners respectfully suggest that the sentence might be reduced by making the six months cumulative in irons, which he received inside the Gaol, concurrent.' This recommendation, having been referred in the usual course to the law officers of the Crown, the Crown Solicitor said:—'Unless it is desired to turn loose upon the community a lot of ruffians, I cannot see any reason for reducing this man's sentence.' And the Attorney-General added, 'A man who has a bad record in Gaol is not a fit subject, in my opinion, for clemency.' The point of your Commissioners' recommendation appears to have escaped the attention of the learned law officers of the Crown. The Imperial law does not, in any circumstances whatever, permit of a cumulative sentence being inflicted inside the Gaol. It is possible that the Western Australian law does permit this, and, in fact, one witness (Mr. Fairbairn) was of opinion that, at any rate in the case of convicts, the necessary statutory authority existed; but as to this your Commissioners are not perfectly satisfied. In any case, they are of opinion that it is extremely undesirable to give a magistrate or visiting justice power to extend a sentence inside the Gaol beyond the term previously publicly awarded in open court. We have come across one or two cases where a small original sentence has developed by cumulative and subsequent sentences in Gaol into a term of incarceration, such as was never contemplated by the judge who passed the original sentence on the prisoner. We recommend that as provided by the New Zealand Prisons Act of 1882 offences within prison walls should be divided into two classes, major and minor. The former should be dealt with only in open court, and the latter, as at present, by the magistrate or visiting justices in the prison.

"No. 3230.—On November 13, 1898, we invited the attention of the Colonial Secretary to the case of this prisoner, who claimed that on that date he ought to have been already out of Gaol, whereas, according to the official calculation of the scale of the remissions allowed, he had still to serve until the 28th of the same month. This was a matter which gave us considerable trouble, because nearly every prisoner complained that his own computation of the remission due to him differed from what was awarded to him by the authorities; and for our own part we found it impossible to reconcile the official scale of remissions submitted to us with the calculations of the Gaol officials in any particular case. Eventually it transpired, incredible as it may seem, that the scale of remissions officially exhibited to the prisoners for their information was not the one on which the Gaol authorities actually calculated their remissions. The practical effect was to involve the state in the cost of maintaining almost every prisoner for a longer period than would have been the case under the scale exhibited in the Gaol, which, of course, was the only one of which the prisoners could have official cognisance. Incidentally, it transpired that if a prisoner is reported for some matter which the visiting justice deems too trivial to merit punishment, the prisoner nevertheless gets seven days knocked off his remission, not because he has done anything wrong, but because he has been reported. This punishment is inflicted without the direction or knowledge of the magistrate. It seems to your Commissioners monstrous that a man who is simply cautioned by the magistrate should virtually receive seven days' imprisonment because he is charged; but that is exactly what the present practice comes to. It is before all things important that prisoners should at all times feel perfectly certain that they will in any and every eventuality be justly dealt with, and a gross injustice to this class must always prove a fruitful source of disorganisation, discontent, and want of discipline. The Colonial Secretary has now adopted a revised scale of remissions, under which no remission will be docked in cases where a first caution is only given.

"No. 10507.—In this case the prisoner has done about two years out of an original five years' sentence for larceny, and, nevertheless, has still about four years and three months to do by reason of cumulative sentences. He originally stole some articles under the value of £5. We recommended his case to the Colonial Secretary as one where the clemency of the Crown might be advantageously exercised, and the Attorney-General, to whom the matter was referred, has promised to give favorable consideration to our recommendation if the prisoner continues of good behaviour for the next six months.

"No. 10479.—This case has been selected by your Commissioners as typical of a class where the sentences appear to them to be very excessive. Of course, it may fairly enough be said that it is purely a matter of opinion whether a sentence is excessive or not in any particular case. Judged by the standard of sentences awarded in England for like offences, the term of incarceration in this case is very long. Even if we do not go outside the colony for a standard of comparison, we find that for 'threatening to kill' this person received a sentence of eight years, being practically the same sentence as another prisoner is under-

going for actual murder. He has already served over three years, and we wrote to the Colonial Secretary recommending the case for the exercise of the clemency of the Crown. Our recommendation has not met with the approval of the law officers of the Crown. It must be admitted that the explanation of what we, rightly or wrongly, consider to be a heavy sentence is to be found in the past career of the prisoner and the previous offences of which he had been punished. In this connection your Commissioners would again call attention to the dictum of Lord Coleridge, that every offence should be considered on its own merits, and without reference to past offences, which have been expiated by appropriate punishment. We do not desire to push this point too far. On the contrary, it seems to us that if first offences may fairly be treated with leniency it logically follows that subsequent offences may fairly be treated with greater severity. Nevertheless, as it seems to us, a sentence of eight years' penal servitude on an old man like the prisoner, for 'threatening to kill,' is beyond the requirements of the case.

"No. 10,514.—ASSAULT AND ROBBERY, SEVEN YEARS.—In this case the prisoner, a man of previous good character, became accidentally associated (while looking for work at Bunbury at about the time when the alleged offence was committed) with a man known to the police. We recommended the case as deserving the consideration of the law officers of the Crown, and we regret that the Attorney-General does not share our view of the matter. Both the Attorney-General and the resident magistrate who tried the case attached great importance to the fact that the man assaulted nearly lost his life. Your Commissioners never doubted the seriousness of the offence, which was indeed apparent. The doubt in our minds, and one which still lingers, is whether the prisoner ever committed the offence of which he was found guilty. Our chief object in calling special attention to this case is to point out what appears to us to be the extreme undesirableness of trying cases of this serious nature in small country townships, where the inhabitants are naturally prejudiced against any stranger who is arrested on suspicion, unless the trial is presided over by a judge of the Supreme Court on circuit, as is the case in all the other colonies. If, on the score of expense, the Government deems it expedient to adopt this system throughout the colony, it might nevertheless be immediately enforced at the centres of population which are connected with the railway system. If the judges of the Supreme Court are unable through pressure of work to find time to go on circuit, the Government should consider the desirableness of appointing a district judge, with jurisdiction in criminal matters, and a limited jurisdiction in civil cases, thus greatly reducing the pressure of civil business, which is now sent up from country towns.

"No. F 3/67.—FORGERY, FIVE YEARS.—In our comment on this case to the Colonial Secretary, we said:—"This is not so much a case where the circumstances call for any special sympathy for the offender as it is one typical of a class of very long sentences, which, in the result, are neither deterrent, reformatory, nor punitive. What punishment there is falls mostly upon the taxpayers." We are glad to note that the Attorney-General also regards this sentence as severe, and undertakes to recommend the prisoner for a substantial reduction of the times of incarceration, if her conduct continues good during the next six months.

Nos. 10544 and 10545.—UNNATURAL OFFENCES, TEN AND SEVEN YEARS RESPECTIVELY.—We have directed the attention of the Colonial Secretary to these cases. They are mere lads. The characters of their offences has rendered it undesirable that they should be associated with other boys in the Gaol, while their youth renders constant companionship with older and hardened criminals equally objectionable. On the whole, we are of opinion that it would be desirable to place these lads under police supervision outside the Gaol. They are more likely to develop into useful citizens if they work under police supervision for their own living than if at the cost of the taxpayer they spend the whole of their early manhood in Gaol. In this connection we may state that we are very strongly of opinion that the Fremantle Gaol is a most undesirable and unsuitable place for the incarceration of youthful prisoners. There is no suitable employment for them, and the one hour a week of schooling which they receive is practically worthless as an educational process. We recommend that all offenders under the age of twenty be removed from Fremantle to Rottnest Reformatory, in regard to which institution we propose as a result of personal inspection to offer some comments at a later stage.

"No. 2326.—This is a typical case of a youthful offender (age about twenty) who commenced a short sentence for some trivial offence, and afterwards was flogged for absconding. He appeared to your Commissioners to be rapidly deteriorating physically, morally, and mentally. We recommended his release, and the Executive has been pleased to discharge him from Gaol.

"No. 2595.—This prisoner is a very young man, undergoing sentence for a second offence of robbery. In this case the Commission when writing to the Colonial Secretary, said, 'This prisoner is a very young man. He is under sentence for a second offence of robbery, committed on his previous discharge from Gaol, when he was destitute. Your Commissioners respectfully recommend that this prisoner's friends be communicated with, and that if they are willing to take care of him and remove him he should be discharged.' The Crown Solicitor, commenting on our recommendation, said, 'The Commission apparently recommends that the prisoner be discharged because he is a young man, and has been twice convicted for offences against property. I really do not know what process of reasoning the Commission adopts in order to come to this conclusion.' We are equally at a loss to understand by what process of reasoning the Crown Solicitor deemed it necessary to subject our very serious and specific recommendation to comment, which is only saved from being flippant by being altogether irrelevant. This is one of a numerous class of cases where a prisoner comes from another country, and has relatives, who, in our opinion, ought to relieve the Western Australian taxpayer of the responsibilities of his maintenance. Our recommendation was that those relatives should be communicated with in order that their wishes might be ascertained, and that if they would take care of him and remove him from this colony he should be discharged. We are still of the same opinion as to the desirableness of this course. Some such policy must be pursued in future if this colony is not to continue to be a dumping ground for young ne'er-do-wells from other countries. We had no intention of recommending, and do not recommend, that the prisoner should be set loose upon this community before the term of his sentence expires.

"No. 3376.—BIGAMY, EIGHTEEN MONTHS.—This prisoner, who lived unhappily with his first wife, made over to her certain valuable properties in another colony, under the mistaken impression that his wife had the power to return for this consideration to release him from any legal proceedings in respect of his offence of bigamy. Compared with other sentences passed on similar offenders, this prisoner, who bears an excellent general character, appears to have been somewhat harshly treated. In this case the Minister of Lands has, at our suggestion, courteously undertaken to protect the homestead block property of the

prisoner from forfeiture during his incarceration. We consider that No. 3376 has been sufficiently punished for his offence, and would strongly recommend his release for consideration.

"No. 2561 and No. 2158.—These prisoners were convicted under Section 66 of the Police Act of 1892, under which any person may be convicted as a rogue and vagabond and sentenced to 12 months' hard labor 'if found in or upon any place for an unlawful purpose.' The Commission recommended that the legal point as to whether Barrack-street, where the prisoners were 'found,' was 'a place' within the meaning of the Act should be determined. In the result the prisoners were released, but they afterwards committed some offence which led to their fresh imprisonment. We call attention to this case because in some quarters the action of the Commission was criticised under the entirely erroneous impression that we had recommended the release of these men. As a fact, we did nothing of the kind. We simply suggested a judicial decision upon an important legal point, which had not previously been authoritatively determined.

"No. 10512 and No. 10454.—Both these prisoners are very emphatic in the assertion of their innocence, and, as far as No. 10454 is concerned, Acting Chief Warder Webster asserts that a detective stated in his presence that he (the detective) knew that No. 10,454 was innocent. No. 10,454 has presented a petition, and we have recommended that the prayer of that petition should be very carefully considered. Both prisoners positively assert that other men who really committed the offence for which they are now suffering punishment are now in the Gaol. In our opinion, it is most undesirable that officers of the Police Department, who have doubts as to the guilt of convicted prisoners, should make any statement to the prisoners themselves in such matters. It is clearly the duty of the officials who may have evidence which will exculpate any prisoner to communicate their information to their superior officers, in order that the requisite steps may be taken to the proper quarter to inquire further into the matter. Other cases where the police have interfered in this manner have been brought under our attention, and we have mentioned the subject to the Commissioner for Police, who cordially endorses our view as to the proper duty of his subordinates, if they become possessed of evidence tending to exculpate any prisoner.

We have the honor to be,  
Your Excellency's most obedient, humble servants,

ADAM JAMESON (Chairman).  
FRANK CRAIG.  
JAMES GALLOP.  
HENRY LOTZ.  
E. W. MAYHEW.  
M. L. MOSS.  
HORACE G. STIRLING.

Witness to the signatures of the Commissioners—

THOMAS HARRY,  
Secretary.

Perth, March 10, 1899.

# FINAL REPORT.

To

His Excellency Lieutenant-Colonel Sir Gerard Smith, Knight Commander of the Most Distinguished Order of Saint Michael and Saint George, Governor and Commander-in-Chief in and over the Colony of Western Australia and its Dependencies, etc., etc., etc.

Sir,—

We, the Commissioners, appointed by Commission, dated the seventh day of September, 1898, to enquire into the existing conditions of the Penal System of Western Australia, and to report upon the method now in use for the punishment of criminals, their classification, the remission of sentences, and the sanitary condition of Fremantle Gaol, as well as to enquire into all contracts for supplies of food and other materials for use in the said Gaol, have the honor to respectfully submit our Third and Final Report as follows:—

In our First Progress Report we dealt generally with those matters which, in our opinion, appeared to be then most urgently in need of the attention of the Executive.

In our Second Progress Report, dated March 6th, 1899, we devoted our attention chiefly to the cases of individual prisoners.

We now propose to deal generally and finally with the whole of the subjects entrusted to us for Report.

Your Commissioners, whilst carefully inquiring into the present condition of the Western Australian Penal System, have kept in view the necessity of adopting whatever experience may have been shown elsewhere to be the best system of prison treatment in the interests, both of society and of the criminal. To this end, and having regard to the special circumstances and requirements of Western Australia, we have carefully consulted the best authorities on criminology, such as Professor Ferri, Lombroso, Du Cane, Tallack, Maudsley, Ellis, Mayhew, and others. We have further had the advantage of a large amount of local evidence with reference to the treatment of our criminal population.

In the result your Commissioners do not advocate the adoption in its entirety of the penal system of any one country, but rather suggest the adoption of what appear to be the best points of all the systems which they have studied, having regard primarily to their adaptation to the special conditions of our own colony. In this way we hope that the number of prisoners will be greatly reduced, and society be benefited both morally and economically.

## CRIMINAL STATISTICS.

The following table, taken from the latest edition of Coghlan's "Seven Colonies of Australasia," shows the number of persons per thousand charged in each colony before the Magistrates:—

Colony.	No. per Thousand of Population.
South Australia ... ..	18.98
Victoria ... ..	19.34
New Zealand ... ..	26.63
Tasmania ... ..	27.61
Queensland ... ..	40.08
New South Wales ... ..	43.87
West Australia ... ..	111.36

If the charges above referred to are classified for each Colony the result is as follows:—

Colony.	Per thousand of population.					
	All	Offenders.	Against Person.	Property.	Total	Minor Offenders.
South Australia ... ..	18.98	1.13	2.23	3.36	15.62	
Victoria ... ..	19.34	0.85	2.42	3.27	16.07	
New Zealand ... ..	26.63	1.84	3.22	5.06	21.57	
Tasmania ... ..	27.61	2.09	5.16	7.25	20.36	
Queensland ... ..	40.08	4.15	4.59	8.74	31.34	
New South Wales ... ..	43.87	3.26	5.02	8.23	35.59	
West Australia ... ..	111.36	8.44	13.31	21.75	89.61	
Australasia ... ..	33.04	2.38	3.96	6.34	26.70	

Out of 1,410 male prisoners committed in Western Australia in 1897 only 104 were born here. Of the rest 589 were born in Great Britain, although they had mostly been domiciled in the Australian Colonies for some years, and 717 were foreigners, or born in other Colonies.

The figures quoted above with reference to charges lead us to believe that the amount of crime, in proportion to the population in Australia, is very much greater than that in Europe, although a perfect comparison is not possible because of the different character of criminal legislation in different countries, and the variations in the rigour with which that legislation is enforced. So far as the number of convictions are concerned, they are higher per thousand of the population than in Europe. This, we think, may be partially explained by the fact that the standing armies of Europe employ and put through a course of discipline a class who would otherwise be likely to swell the number of unemployed and vagrant persons.

Your Commissioners are of opinion that the excess of crime may also in part be due to the lack of religious training in the State Schools, and to the fact that this deficiency is in too large a number of cases not compensated by religious or moral training at home.

As regards Western Australia the statistics further clearly indicate that the somewhat appalling amount of crime here existent is due to the large immigration of undesirable individuals from the Eastern

Colonies and elsewhere, attracted no doubt by the discoveries of gold. Now that the gold industry is settling down to a regular business this condition of things is rapidly passing away, and the foreign offenders who were attracted here fortunately show little desire to settle in the colony after they have been released from custody.

Having regard, nevertheless, to the large proportion of foreign offenders still in our midst it would not be reasonable to expect a young colony, such as Western Australia is, to take upon itself to initiate costly methods of reforming the criminal, such as are adopted in the United Kingdom, Belgium, and at Elmira, in the State of New York, where older, more settled, and wealthier communities have set in motion various elaborate and costly schemes of criminal reform.

Your Commissioners are of opinion that criminals of foreign or extra-West Australian origin should be encouraged, as far as possible, on their release from custody, to return to the countries from which they came. Whilst in prison they should be compelled to do such remunerative work as will, at any rate, to a large extent recoup to the State the cost of their maintenance.

#### CAUSES OF CRIME.

In order to deal with crime in an effectual and practical manner we must first understand its causes, and ascertain how far these causes are removable and remediable.

In this relation the tendency of scientists during the last few decades has been more and more to study the individual characteristics and peculiarities of the criminal as compared with non-criminal individuals, rather than the nature of the offence which he has committed. Scientific researches in this direction have supplied us with statistics of a very definite kind, showing that the criminal is not a normal individual, but a morbid variety of mankind, physically and morally degenerate.

Fortunately, this innate degeneracy of body and mind is in degree only, and thus those who are but slightly degenerate become criminals owing to stress of circumstances. They are therefore amenable to and susceptible of reclamation and reformation when placed in a suitable environment.

The recognition of this—the biological—factor in crime gives us a definite standpoint from which we can view it, and enables us to understand more clearly what natural and social influences are likely to affect the criminal man, who, from his degeneracy, has less control over his actions than the ordinary man.

The social environment is the cultivation medium of crime.\*†

Neglect of sanitary and hygienic requirements greatly increases crime. So also does lack of education, especially of that part of education which deals with the physical and moral well-being of the individual.

Crime is ever influenced by climate, there always being an increase of crimes of violence in hot weather.‡

Ferri holds that any system of taxation which unduly increases the cost of the prime necessities of life induces a corresponding increase in offences against property.

Again, any process by which public veneration for the law of the land is weakened most certainly increases crime. Thus purely expedient and experimental laws, not founded upon the dictates of justice and morality, may be the means of creating a temptation to do that which is punishable but not immoral. For instance, it is right to sell goods to any person who wants them and can pay for them at any hour which may suit the convenience of the parties concerned, but in some countries it is illegal. Such enactments must surely, by insidiously undermining the general respect of the people for the law, lead to an increase in the number of breaches of the law.§

Poverty is generally admitted to be the main cause of the great bulk of anti-social offences; but here we are met with the curious paradox that crime is nevertheless most rife in times of prosperity.¶ The Queensland Commissioners in their Report called special attention to what strikes them as being an extraordinary thing that in Queensland the years of exceptional prosperity should have been also years of exceptionally heavy criminal records, but since that report was published, investigations in other parts of the world point in the same direction, and establish the same conclusion as that indicated by West Australian official statistics.

\*"Society prepares crime; the criminal is the instrument that executes it."—Quetelet.

†The social environment is the cultivation medium of criminality; the criminal is the microbe, an element which only becomes important when it finds the medium which causes it to ferment; every society has the criminals it deserves.—Lacassagne.

‡"Last year it was very seriously urged by the press to issue forecasts of 'increase of crime,' it being known that such an increase really takes place during some sorts of hot weather."—"Nineteenth Century."

§The idea conveyed in the above paragraph, that the State itself may in a certain sense become a manufacturer of criminals, is to some extent novel, and fearing that our views on this might be misapprehended in some quarters, we were in some doubt whether we should give expression to them. But, by a curious coincidence, the London "Times" of February 6, of this year, about the date when we first drafted our suggestions on this point, expresses exactly the same idea in almost the identical terms of our first draft. The "Times" says:—"Parliament is constantly swelling the list of 'Petty Offences, saying this shall be punishable by fine, that by imprisonment, and, what is a still more fruitful source of 'so-called crime, Parliament authorising public bodies to make By-laws which convert into crime what does not necessarily shock the consciences of ordinary citizens. This point merits attention. The various societies for the amelioration of the Criminal Law could not do better work than bring home to Members of Parliament the prodigious rate at which they are multiplying offences." We need scarcely say that we cordially endorse these sentiments. The "Times" goes on to say:—"It satisfies the pride of public bodies to stamp as a crime that which is intrinsically trivial; but it is a mischievous perversion of the objects of criminal law. At the beginning of the century there were complaints as to the 'multiplication of judge-made misdemeanours: at the close of it there is stronger ground for deploring the excessive increase of statute-made offences." If these remarks be true of Great Britain they apply with infinitely greater force to Australia, where the various local Governments seem to vie with each other in multiplying laws for the purpose of "converting into crime what does not necessarily shock the consciences of ordinary citizens."

¶Dr. Cleland, of Adelaide, puts this point very clearly when he says:—"Increased admissions to the prisons is a good index of the general prosperity of the masses. This, at first sight, may appear to be contradictory to a former statement that destitution is a breeder of the habitual offender. It is not so in reality. The crimes of prosperity are 'crimes of passion and of animal indulgence resulting from the unaccustomed handling of increased money. The crimes of adverse times are those resulting from organic degeneracy in the individual, and are an index of the degeneracy in the community. In prosperous times both factors are at work: in adverse times only the latter."

Crime having been shown to be due to a physical and mental degeneration of the individual, it follows that anything which increases this degenerate condition conduces to crime and vice-versa.

Crime is increased by :—

- (1) Ignorance.
- (2) Poverty.
- (3) Lack of employment.
- (4) Insanitary surroundings.
- (5) Abuse of intoxicants
- (6) Loss of veneration for the Law.

Crime is decreased or prevented by :—

- (1) Healthy environment.
- (2) Education.
- (3) Industry.
- (4) Punitive repression.

Every country has its own special and peculiar causes of crime. That is to say, the varying economic, social, political, and even climatic conditions of different countries naturally lead to the prevalence or otherwise of particular classes of crime. Thus we have already pointed out that in West Australia the cause which has been chiefly operative during the last few years has been the depression in the Eastern Colonies coincident with the gold discoveries in this colony. There has been an immense influx of population in search of wealth, and among the new arrivals thus attracted have undoubtedly been a number of notorious criminals.

In dealing with the criminal, it must always be remembered that, as ordinary members of the community, we are obliged to live up to a certain social and moral standard, a standard largely fixed for us by Act of Parliament. The criminal is an individual whose organisation makes it impossible for him to live up to this standard, and easy to accept the penalties of acting anti-socially. By some accident of development, by some defect of heredity, or of birth, or of training, he belongs, as it were, to a lower and older social state than that in which he is actually living.\*

Like the poet, the habitual criminal is "born and not made"; but this principle is not universal in its application. On the contrary, so far as West Australia is concerned, the reverse is usually true. He is "made and not born." That is to say, he is generally imported ready-made from the other colonies. He is not a product of local conditions, as for instance, the British, the French, or the German criminal. This circumstance becomes of the gravest importance when considering what attitude our State should adopt towards him.

For this reason, and taking into account the important circumstance that it was not West Australian environments which produced the majority of the criminals whom we are called upon to punish and to maintain whilst undergoing treatment, we emphasise the recommendation already made by us that all "foreign" prisoners should, on their release, be encouraged to leave the colony as early as possible.

#### PUNISHMENT.

Of late years the general tendency of prison reformers has been whilst making the punishment of each individual prisoner as severe as possible, also to provide every possible opportunity for the prisoner's reform. In some cases, as at Elmira, reform rather than punishment appears to have been the object chiefly aimed at. The Elmira system may be regarded as being, to some extent, still on its trial, and has, so far, not met with the unqualified approval of criminologists. The main feature of the Elmira system is what is known as the "indeterminate" sentence. Prisoners are not committed to Elmira for a definite term of years. The period of their detention is fixed by the Superintendent in accordance with his opinion as to the fitness of the individual prisoner for release. As there are some criminals who can never be reformed at all it logically follows, as the Elmira authorities point out, that there are some prisoners who ought never to be released; but the power of the Superintendent is modified in this matter by the law of the State of New York, which fixes a maximum term of incarceration beyond which the prisoner can, under no circumstances, be detained, whether reformed or not. We refer to the Elmira system especially in the following paragraph, because of late years the general introduction of "indeterminate" sentences has been strongly advocated by some Australian criminal reformers.

**ELMIRA SYSTEM OF CRIMINAL REFORM.**—The Elmira Reformatory of the State of New York was founded in 1876. The leading feature of this remarkable institution is what is known as the indeterminate sentence.

First offender prisoners of all classes and whose ages range from 16 to 30 years, are committed to Elmira for an indeterminate period. On their reception into custody the General Superintendent submits the prisoners to an elaborate and critical examination, resulting in their classification for subsequent treatment. The effect, practically, is to remove the determination of the length of the sentence from the judge into the hands of the General Superintendent. This is modified only by the fact that a certain maximum period of incarceration is provided by the law for every class of offence.

The State has sunk about £300,000 at Elmira, and expends annually on its maintenance a net sum of £36,000.

Wonderful reformatory results have been claimed for Elmira, but it seems to us that, as previously stated, a system which leaves so much to the personality of the Superintendent in charge is open to grave objection. We doubt whether in a small community it would ever be safe to leave the term of imprison-

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\*"A man of rank and fortune is the distinguished member of a great society, who attend to every part of his conduct, and thereby oblige him to attend to every part of it himself. He dare not do anything which would disgrace or discredit him in it, and he is obliged to a very strict observation of that species of morals, whether liberal or austere, which the general consent of this society prescribes to persons of his rank and fortune. A man of low condition on the contrary has his conduct observed and attended to by nobody, and he is therefore very likely to neglect it himself."—Adam Smith.

ment of each prisoner in the hands of an individual who would be subject to constant pressure by the prisoner's friends.

The intellectual training of the Elmira prisoners includes classes for primary instruction and courses of lectures on literature, art, etc. There are also debating societies to which the public are admitted. Practically, except in the matter of the personnel and the discipline of the students, there is little difference between Elmira and an ordinary college. To us it appears to be a fatal objection to the Elmira system that criminals, merely because they are criminals should, at the public cost, be surrounded by conditions of life and culture infinitely superior to those enjoyed by honest men of the same rank in life. And there is the further objection that the whole process and the duration of the Elmira mode of treatment depends upon the judgment of one individual, the Superintendent, who is unlikely to possess all the qualifications of a Board of Medical Jurists, such as would be necessary properly to deal with so delicate and complicated a matter.

A weak spot in the Elmira system is the not unnatural tendency of all prison authorities, in spite of constant practical proof to the contrary, to regard those prisoners as being the best and most hopeful characters who give least trouble to the authorities during their incarceration. It is, however, perfectly notorious that the most virile, the most capable and intelligent prisoners are by no means usually the best behaved in prison. As a matter of fact troublesome prisoners are ordinarily those who retain some vestiges of will power and of individuality, and the exercise of those qualities is tolerably certain to bring them into constant conflict with the prison authorities. The least intellectually capable prisoners generally give least trouble in gaol, and are the most likely under the "indeterminate" system to secure early release.

On the other hand, Dr. Dugdale, an eminent criminologist, says that, broadly speaking, troublesome prisoners who are capable men are usually the most hopeful subjects for reform, and Commandant Booth, speaking from a large experience of the criminal classes, expresses much the same opinion.

It may here be noted that in the course of our correspondence with the local authorities with reference to the cases of individual prisoners in Fremantle Gaol, we have invariably found that they all attach great importance to the prisoner's record in the gaol. If this shows that the prisoner has been guilty of breaches of discipline, he is always set down as being a very bad case, although it is perfectly certain that members of the habitual offender class, whose life is one long career of crime, usually give little or no trouble to those responsible for their custody when in prison.\*

Necessary as the prison may be as a punitive agent we cannot regard any form of imprisonment as having been shown to be particularly successful as a reforming influence.†† On the contrary, institutional life with its fixed rules, its removal of the elements of hope, of anxiety, and of the necessity for individual enterprise, tends to make the prisoner more or less of an automaton.

For this reason your Commissioners prefer short, sharp, and severe sentences to prolonged terms of imprisonment as a means of dealing with all minor offences.§

We do not desire to make the prison a comfortable home for the depraved members of society, from whatever cause their depravity may have arisen. In our opinion prison life should, consistently with requirements of ordinary humanity and of justice, be made as uncomfortable to the prisoner as possible.

Short sentences, if made sufficiently severe, have the great advantage of relieving the taxpayer of the support of a number of persons who ought to be compelled to earn their own living, and the living of those people who are dependent upon them, and in the case of short-sentence men it is possible to adopt a lower and less expensive diet regimen than is practicable in the case of men who are incarcerated for a long term of years.

The degree of certainty or of uncertainty in the matter of punishment is one of the most important influences in determining the amount of crime in any country. It will invariably be found that crime is most abundant in those countries where its punishment is most uncertain. As Sir Samuel Romilly says:—"If it were possible that punishment as a consequence of guilt could be reduced to absolute certainty, a very slight penalty would be sufficient to prevent almost every species of crime, except those which arise from sudden gusts of ungovernable passion."

**CAPITAL PUNISHMENT.**—On the subject of capital punishment there is naturally room for very great difference of opinion, but the matter is obviously of such prime importance that it cannot be passed over when dealing with any penological system.

In England up to the year 1771 there were upwards of 200 crimes, the penalty for which was death. Even as late as the year 1837 there were 37 capital offences. At the present day there are still four, viz., treason, murder, piracy with violence, and setting fire to dockyards and arsenals. In Western Australia the death penalty for rape, which was abolished in England by the Act of 1861, is still retained, its abolition being provided for by one of the sections of the English Act, which was not adopted in our local Act, 29 Victoria, No. 5.

The tendency of modern times has, undoubtedly, in all civilised countries, been to reduce the number of offences for which capital punishment may be inflicted, and in some European countries the death penalty has been abolished altogether. But the result of this leniency cannot be said to have been altogether satisfactory.

In Italy, for instance, where imprisonment for life is inflicted in the case of murder, the number of murders and of crimes of violence of all kinds continues to increase, whilst the respect for human life is decreasing.

Convicted murderers are in Italy condemned to imprisonment for life, and according to the Naples correspondent of the London "Daily News," murders repeatedly occur even within the prison which has been specially set apart for the reception of hundreds of capital offenders.

One of the main objections to life imprisonment as a substitute for the gallows is that it is, in the

\*"Good conduct, so-called, is a fallacious test."—Ferri.

†"Imprisonment not only fails to reform offenders, but in the case of the less hardened criminals, and especially of first offenders, it produces a deteriorating effect."—Prisons Committee (England), 1895.

‡"The habitual criminal is in far too many cases a product of prison treatment, a victim of vicious and unsound methods of dealing with the convicted population."—Morrison.

§"I do not believe in very long sentences. I do not think they answer the purpose."—R. Fairbairn, R.M.

opinion of most persons who have watched its effects, a much more cruel form of punishment than any instantaneous death penalty.

The Chief Director of Prisons in Sweden, where capital punishment is practically never inflicted, reported a few years ago that the life prisoners under his charge complained very bitterly to him on this point. They said, "Why did you spare us from the infliction of death? You have kept us here alive. The King's clemency to us is no real mercy. On the contrary, it is the severest aggravation of our punishment."

The main obstacle in the way of the abolition of capital punishment is the difficulty of substituting any adequate penalty, which shall not be infinitely more cruel than the punishment of which it takes the place. Where the experiment has been tried, in the United States, of indeterminate sentences, murders have not only taken place inside the gaol, but have been committed by released prisoners of homicidal tendencies, who are supposed to have been reformed.

It is urged by the advocates of the abolition of capital punishment that, having regard to the large number of offences which were formerly subject to the death penalty, but which society insists shall now be treated more leniently, it is only a question of time when an enlightened public opinion will insist upon the entire removal of the death penalty from the penological system of civilised communities.

On the other hand, it is scarcely possible to say how much society may have been the gainer during the nineteenth century by the wholesale sweeping away of criminals under the drastic treatment of the sixteenth, seventeenth, and the eighteenth centuries. Morrison, a very impartial observer, says on this point:—"A great deal has been said and written both for and against the retention of this form of punishment. To set forth the argument on both sides in a fair and adequate manner would require a volume; it must, therefore, suffice to say that in the field of controversy the contest between the opposing parties is a fairly even one. In fact, looking at the matter from a purely polemical point of view the advocates of the death penalty have probably the best of it."

On the whole, we are of opinion that the time has not yet come to Australia for the abolition of the death penalty, a punishment which, by its strong hold on the public imagination, has been shown to exercise a powerful deterrent influence. In our opinion also society must be perpetually on its guard that it does not, in the interests of a mistaken humanitarianism, pursue a course of action which shall, eventually, lead to the survival of the unfittest rather than of the fittest.

**CORPORAL PUNISHMENT.**—Of all known methods of dealing with criminal offenders corporal punishment is admittedly the oldest and most primitive, and for certain offences it still retains a place in the criminal legislation of England, Scotland, Ireland, Norway, Denmark, and most, if not all, of the British colonies. On the other hand, it is excluded by the penal codes of France, Italy, Germany, Austria, Switzerland, Sweden, and even Russia, where until recent years the knout was such a prominent figure in penal instruments. Viewed in the abstract, flogging does not appear to be a particularly rational form of punishment, but on the other hand we feel that the balance of evidence is in favor of its retention, because of its supposed deterrent effect, in those cases where it is provided for in our statutes. It would therefore, we think, at present, be premature to abolish corporal punishment, which, although admittedly non-reformative, may be deterrent.

In any case we see no objection to the retention of the birch for juvenile offenders. The birching or whipping of children is permitted by the criminal laws of England, Ireland, Scotland, Norway, and Denmark, but in no other European countries. Denmark is the only country where the whipping of girls (up to the age of twelve) is permitted. On the other hand even the corporal chastisement of boys by their own parents is in Italy an offence punishable by law.

In England the bulk of the evidence taken before the Royal Commission on Reformatory and Industrial Schools supported the utility of whipping.

**PUNISHMENT FOR OFFENCES WITHIN PRISON WALLS.**—The punishments now in operation for offences within the prison walls include flogging, dark cells, and irons.

**FLOGGING.** We recommend the abolition of flogging for all prison offences.\* As a matter of fact it has rarely been given of late years at Fremantle, except in the case of escapees, and the evidence of the visiting justices and the prison officials is unanimously against flogging escapees, where no personal violence is attempted by the escapees. Furthermore, the probability of the occurrences of serious prison offences under the separate system advocated by us is very remote.

**DARK CELLS.**—For the reasons laid down in our First Progress Report we recommend the abolition of the dark cells. They are a relic of barbarism, and serve, no good purpose whatever.† They are chiefly brought into use for the purpose of subduing unruly prisoners, but, in our opinion, this can be much more effectually done by strict separate confinement in light cells on a bread-and-water diet.

We regret to find that (vide evidence of Mr. Fairbairn, question 900), when magistrates have ordered three days' bread and water, dark cells have invariably been made use of, not only without the special order of the magistrate, but without the knowledge of the latter.‡

**IRONS.**—We are strongly opposed to the use of irons on prisoners in any case, and especially in the case of prisoners sentenced to death, who are now quite unnecessarily kept in irons from the moment of their sentence.

**THE CRANK.**—Among the punishments, although to some extent it comes within the category of labor, may be included the crank, which is turned by some of the prisoners for the purpose of raising water for gaol purposes.§||

If our suggestions in regard to prison labor are adopted the crank can be done away with. It is a most uneconomical and ineffectual mode of employing prison labor, as all the work done by the crank could be done much more rapidly and cheaply by steam power.

\*"I do not approve of flogging at all in any case. I consider it has a degrading effect."—J. Lilly, J.P.

†"I am not in favor of the dark cell treatment at all, except in aggravated cases."—J. Lilly, J.P.

‡"I was not aware, until the Commission pointed it out, that dark cells were given in every case where I ordered bread and water."—R. Fairbairn, R.M.

§"To men of any intelligence this monotonous labor is irritating, depressing, and debasing to the mental faculties; to those already of a low type of intelligence it is too conformable to the state of mind out of which it is most desirable that they should be raised."—Sir E. Du Cane.

||"I am a tailor, but for some years I have been turning a crank until I am nearly cranky myself."—Prisoner No. 10486. Question 37.



## MODES OF PUNITIVE TREATMENT PROPOSED.\*

**FREMANTLE AS A LOCAL GAOL.**—We recommend that Fremantle Gaol should be used as a local gaol for all persons undergoing terms of imprisonment of two years or less. All those undergoing penal servitude should serve their first three months under separate treatment at Fremantle, and then be immediately transferred to a separate labor establishment.†

**LABOR PRISON.**—From the evidence before us we believe that either Drakesbrook or Coolup would be a suitable place for such a labor prison. We offer as an alternative suggestion the employment of the prisoners in clearing and draining land for occupation by agricultural settlers; possibly also quarrying, etc.‡

We have given a great deal of attention to the various forms of punitive treatment to which prisoners ought to be subjected and the different kinds of work on which prisoners might be employed.

**SEPARATE CELLULAR TREATMENT.**—We recommend in the first place that every prisoner should undergo separate cellular treatment for the first three months of his sentence,†† or for the whole of his sentence if for less than three months, and all prisoners should be carefully classified according to the industry for which, in the opinion of the authorities, they may appear to be best adapted.§

It will thus be seen that we base our proposed system of classification not upon the nature of the offence of the prisoner nor upon the length of his sentence, but upon his physical and mental aptitude for the various kinds of work which prisoners may, under the actual conditions of our Colony, be most conveniently called upon to do. We think that the form of classification, although by no means theoretically perfect, will be found to be the most practicable for adoption in this colony.||

In regard generally to the working of the system of cellular separation, which we recommend during the first part of the term of imprisonment, Mr. Tallack says:—"The adoption of cellular separation from evil (but not from good) association during the shorter terms of confinement has been attended with marked advantages in prisons in Great Britain, Holland, and Belgium, Pennsylvania, and elsewhere. "But, even in these cases, it has not been in the power of the authorities to obviate some of the great evils inseparable from any form of incarceration."

Provision must be made for work, exercise (two hours daily), and education (by reading).

For the latter purpose a good library is a *sine qua non*.

As this form of imprisonment is infinitely more severe than that which has been adopted hitherto, the bench and magistracy would have to be thoroughly alive to the fact, and know that in sentencing, to even one month the punishment would be a severe one.

After the term of separate confinement the prisoner, if his term be for under two years, will then be placed to work within the prison at the class of industry for which he is most fitted, according to the decision of the prison authorities. This industry he will work at in association with other prisoners employed at the same industry, quite independently of the offence for which he is rendering expiation. He will have all his meals in his cell. Besides instruction from the schoolmaster and liberty to read good literature, including recognised standard works of fiction, he may attend occasional lectures given by the staff and others on such subjects as thrift, temperance, etc.

**ASSOCIATED TREATMENT.**—On the expiration of the three months of separate treatment prisoners should be drafted into associated gangs, for which they will be classified according to the experience previously gained of their respective capabilities.

**LABOUR.**—Whether under separate or associated treatment prisoners should be required to work at such industries as may most conveniently and profitably be carried on within the prison walls. These industries will comprise, amongst others, mat-making and basket-making in the first place; and probably subsequently, boot-making, carpentering, blacksmithing, etc.

We recommend that all the products of prison labor, such as mats, baskets, clothing, etc., should be used in the supply of the requirements of the public service, especially those of the different prisons themselves.¶ \*\*

**LABOUR OUTSIDE THE PRISON WALLS.**—Gangs of penal servitude men should, at the discretion of the Inspector-General or other equivalent and competent authority, be employed in clearing and improv-

\*"Imprisonment should be a gradual preparation for liberty. It should be organised on such a principle that the contrast between detention and liberty will not be too great when the day of liberation at last arrives."—Morrison.

†"The distinction made by the use of the term 'imprisonment,' to denote sentences of two years and under, and 'penal servitude,' to denote sentences of two years and upwards, no longer has any significance, and it is misleading, for both classes of prisoners are undergoing 'imprisonment,' and are equally in a condition of 'penal servitude.' The only point to be kept in view is that the treatment should be adapted to the length of the sentence."—Sir E. Du Cane.

††"In our First Progress Report the period of six months separate treatment was suggested, but on maturer consideration we have arrived at the conclusion that the term of three months would be sufficient for punitive.

‡"It is so obvious as hardly to require stating, that as persons who are earning a livelihood while free are competing with somebody or other, so it is perfectly reasonable that they should work, and therefore compete equally after being put in prison."—Sir E. Du Cane.

"It is better for the honest man that he should submit to the competition of even prison taught fellow craftsmen than that he should be the victim of their cupidity or criminality."—Queensland Commissioners.

§"During this period he becomes open to lessons of admonition and warning; religious influences have full opportunity of obtaining access to him; he is put in that condition when he is likely to feel sorrow for the past, and to welcome the words of those who show him how to avoid evil for the future."—Sir E. Du Cane.

|| In our First Progress Report we inclined to the opinion that the classification should follow the nature of the offence rather than the length of the sentence, and to this view we still adhere, subject, however, to the modification that, under a system of associated employment, classification must obviously generally follow the character of the work for which the men are best fitted.

¶"Many of the disadvantages which attend the system of making prisons into manufactories are avoided by performing in them work required by the Government, and certainly work of this kind should be preferred to any other."—Sir E. Du Cane.

\*\*"I would certainly like to see any articles, which are now imported, and are the product of foreign prison labor made in our own prisons."—J. Lilly, J.P.

ing, by draining, land for agricultural and horticultural occupation in the South-Western parts of the colony.\*†

#### CLASSIFICATION.

Wherever classification is referred to and recommended in this report we propose that it should be prefaced by a process of exclusion in the following manner:—

1. First offenders should be excluded from prison as far as possible. Their offences should be expiated by fines or enforced labor.

2. Neither sex should be admitted to a gaol under the age of sixteen for males and eighteen for females.

3. Lunatics, imbeciles, drunkards, vagrants (meaning thereby homeless wanderers, and not necessarily criminal characters), diseased persons, should all be treated in institutions especially adapted for them, not in gaol.

4. The prison, so far as it applies to the association of prisoners, should not receive those sentenced to penal servitude. The latter, after completing their period of separate treatment, should go directly to a labor establishment.

The exclusion of these, by greatly reducing the number of prisoners, enables us at once to realise an effective prison management, by founding our system upon the soundest possible basis, namely, that of complete separation of individuals from each other. Separate treatment of prisoners is not only punitive and deterrent in a high degree, but may also be rendered actively reformative.

#### REMUNERATION OF PRISONERS.

In our First Progress Report we recommended that every prisoner should be credited with a small sum for every month's work done by him whilst undergoing incarceration. In this way a small fund will be available for him on his discharge. At the present time many prisoners leave in a perfectly destitute condition, and inevitably soon drift into custody again, either as homeless vagrants or as criminals.

Something in the nature of the Prison Gate Brigades, which the other colonies liberally subsidise, is also urgently required. There are of course many prisoners who are perfectly able to shift for themselves, but there are others who are homeless and friendless, and to these latter the Prison Gate Brigades offer food and shelter pending the securing of suitable employment.‡

#### SALVATION ARMY PROPOSALS.

Commandant Booth, of the Salvation Army, favored your Commissioners with an outline of the proposals of the Army in regard to discharged prisoners. It appears that the Army desires to be placed in occupation of an area of well-watered ground, about 100 acres in extent, and within easy reach of Perth.

On such a block of land the Army proposes, if satisfactory arrangements can be made with the Government, to establish a farm and workshops for the industrial occupation of destitute discharged prisoners, who are willing to place themselves under the influences of this organisation. The Army is prepared also to receive, if desired, any prisoners who may be released on probation, although it can accept no responsibility in regard to the safe custody of the latter. Similar institutions under the control of the Army in New South Wales and Queensland receive from the Government a fixed grant of £300 and £250 a year respectively. Alternatively to a grant the Army asks for an allowance of 10s. per week for each man, so long as he remains at the farm.

An institution of this class would be worked in association with a Prison Gates Brigade, which is very urgently wanted in West Australia, and has proved to be of incalculable benefit in all the eastern colonies.

It is not going too far to say that no known organisation in the world is so thoroughly and constantly in touch with either the criminal or the destitute classes or both, as the Salvation Army. In this important particular the police departments of the various colonies cannot in any way compare with the Salvation Army, because the police necessarily know the individual merely qua offender or qua destitute, whilst the Army brings human sympathies into play, and follows him throughout every step of his career. If a discharged prisoner has been under the protection of the Army in Brisbane, its influences will follow him to Melbourne or Adelaide or Perth, and at any place he goes to he can be immediately subjected to a beneficial environment. As the Commandant points out, it is frequently urged against the claims of the Army to take an active part in the reformation of prisoners that it is a proselytising institution; but the obvious reply to this is that criminals can scarcely, for practical purposes, be regarded as valuable members of any church, and in any case there is no obligation upon the part of any prisoner to avail himself of the services and assistance which the Army offers.

#### FEMALE OFFENDERS.

There are, fortunately, but few female offenders, comparatively speaking, in Western Australia. Very few of the female prisoners have volunteered to give us any evidence, and in those cases where they did nothing was elicited of any value affecting penological principles. For the most part their evidence related purely to matters of personal detail.

\*"The importance of the public works executed by convicts since the system was introduced is exemplified at Portland, where this labor has been employed in quarrying the stone for the construction of the breakwater—a stone dam into the sea, nearly two miles in length, and running into water 50 or 60 feet deep. They have also executed the barracks and the principal part of the works of defence, batteries, casemates, etc., on the island, which may be considered impregnable to any mode of attack except blockade and starvation of the garrison. In executing these works every variety of mechanics' work necessary in building or engineering has been executed by convicts."—Sir E. Du Cane.

†"We are convinced that severe labor on public works is most beneficial in teaching criminals habits of industry, and training them to such employments as digging, road-making, quarrying, stone-dressing, building, and brickmaking—work of a kind which cannot be carried on in separate confinement. It is found that employment of this nature is most easily obtained by convicts on their release, since men are taken on for rough work without the strict inquiries as to previous character which are made in other cases."—Royal Commission on Penal Servitude, 1879.

‡"It is the first few weeks of liberty which is the greatest danger for all prisoners."—Morrison.

One of the greatest difficulties in the treatment of female offenders is the fact that, compared to men, they enter upon a criminal career at a much later age, and thus frequently at the outset overstep the period within which they could, as juvenile offenders, be subjected to reforming influences.\*

On this point Morrison says:—"The criminal age among women is later in its commencement because of the greater care and watchfulness exercised over girls than boys; but it is more persistent while it lasts, because the plunge into crime is a more irreparable thing in a woman than in a man. . . . If it is important to keep men as much as possible out of prison, it is doubly necessary to keep out women; but it is, at the same time, a much harder thing to accomplish. This arises from the fact that the great bulk of female offenders enter the criminal arena after the age of 21, and can only be dealt with by a sentence of imprisonment. If females began crime at any earlier period of life it would be possible to send them to reformatories or industrial schools, and a fair hope of saving them would still remain."

Undoubtedly the heavy social penalties involved by imprisonment press much more severely upon women than upon men, and for that reason a much briefer term of incarceration is necessary in their case than in the case of men, in order to attain the same punitive results.

We recommend that in the case of first offences by women all who are under the age of eighteen should be treated in reformatories.

JUVENILE OFFENDERS.†‡

Your Commissioners were favored by Commandant Booth, of the Salvation Army, with some particulars of the work done by the organisation, of which this witness is a recognised representative. From the Commandant we gather that the Salvation Army is prepared, if required, to take over all or any of the children now in the Reformatory or Industrial Schools of the Colony, and to relieve the State of their charge in return for an allowance of 7s. 10½d. per week per head for the Industrial School children, and of 10s. 6d. per week for the Reformatory children. We invite attention to Commandant Booth's evidence on this point, which is as follows:—

"The Victorian system has abolished all Government Reformatories and Schools. There is nothing but a central depot. The children are committed to the department and lodged in the depot until the officer in charge allocates them. The neglected children are boarded out, and the criminal children and a certain proportion of the neglected children, who are not suitable for boarding out, are sent to semi-Government institutions controlled by private persons. We have thirty boys at one farm. They are warded to me as constituted head of the Salvation Army until they are 18. While they are with us we get 10s. a week for each boy and £5 for an outfit for him when he leaves the home. . . . The children practically gradually merge into the ordinary population. . . . We have 260 children under our charge in Victoria. We would be prepared to take charge of the children here at 10s. 6d. a week from the reformatory and 7s. 10½d. from the industrial schools."

If this proposal were entirely experimental in its character we should hesitate to recommend the consideration, even in a modified form, of a scheme so entirely subversive of the arrangements at present made by the State for the treatment of juvenile offenders and the young waifs and strays for whose maintenance and training it is responsible. The Salvation Army, however, claims to have done much good service in this direction in the eastern colonies, where the Governments concerned have handed over a number of children to its charge; and we would suggest that it would be desirable to communicate with the Governments of New South Wales, Victoria, and Queensland in order to ascertain what, if any, modifications may be shown by experience to be desirable if it should be decided to accept the proposals of the Salvation Army. Incidentally, it may be mentioned that as special provision is already made for the committed children of Roman Catholic parents, it is questionable whether any difficulties would arise on religious grounds with reference to children who might be handed over to the Salvation Army.

The following return has been handed to us by the Inspector of Charitable Institutions:—

			Remaining 31st Dec., 1897.		Admitted, Year 1898.		Discharged, Year 1898.		Remaining, 31st Dec., 1898.		Paid by Government as Maintenance.		
			Boys.	Girls.	Boys.	Girls.	Boys.	Girls.	Boys.	Girls.			
Government	Industrial	School,											
Subiaco	...	...	17	10	36	14	25	4	28	20	£	s.	d.
Boys' Reformatory,	Rottnest	...	9	...	20	...	12	...	17	...	1,068	12	4
											678	3	5
			26	10	56	14	37	4	45	20	1,746	15	9

In the event only of the Government deciding upon the further information which they may receive not to arrange with the Salvation Army for the custody of the Reformatory and Industrial children, we recommend—

1. That the Government Industrial School at Subiaco be, in future, used as a receiving-house for all boys and a house of detention for all girls.
2. The Reformatory at Rottnest to be done away with, and an Industrial School established at Rottnest for all male juvenile offenders.
3. From Subiaco the male children will be drafted off to Rottnest institution, where they will be classified by the superintendent or other governing authority.

\*"Females are, as a rule, later in being subjected to reformatory discipline than males, with the ultimate result that the discipline is less effective, when at last it has to be resorted to."—Morrison.

†"Whether we look at the Old World or the New, we find that juvenile crime is a problem which is not decreasing with the march of civilisation. Every civilised community is confronted with it in a more or less menacing form."—Morrison. "Juvenile Offenders."

‡"On our return from Tothill Fields Prison we consulted with some of our friends as to the various peccadilloes of their youth, and though each we asked had grown to be a man of some little mark in the world—both for intellect and honor, they one and all confessed to having committed in their younger days many of the very 'crimes' for which the boys at Tothill Fields were incarcerated. For ourselves, we will frankly confess that at Westminster School, where we had passed some seven years of our boyhood, such acts were daily perpetrated, and yet if the scholars had been sent to the House of Correction instead of to Oxford and Cambridge to complete their education, the country would have seen many of our playmates working among the convicts in the dockyards rather than lending dignity to the Senate or honor to the bench."—Mayhew, London Labor and London Poor, 1862.

4. That the commitment order of the magistrates shall, in all cases, be for an indeterminate period, up to a maximum of 16 years, for boys, and 18 years for girls, but not less than twelve months shall be spent under strict discipline.

5. After 12 months the superintendent of the Industrial School may recommend for apprenticeship any children who, in his opinion, appear to be sufficiently reformed. In all cases of apprenticeship the children must go to persons residing in the country districts only, and not in or near Perth.

6. The superintendent or other governing authority should, from time to time, notify the Resident Magistrates in the various rural districts that certain boys are open to engagement or apprenticeship under the statutory conditions. Under no circumstances are any boys to be sent to persons of whom the Resident Magistrate does not approve.

7. During detention at Rottneest all boys should be put to work improving the land, gardening, and out-door industrial occupation generally.

8. Under no circumstances should boys under the age of sixteen be committed to prison; nor girls under the age of eighteen.

#### DISPARITY AND IRREGULARITY OF SENTENCES.

Mr. Tallack, in his "Penological Principles," calls especial attention to the manner in which the public sense of justice is outraged by the extraordinary discrepancy in the sentences passed for similar offences by different Courts, and he cites a number of cases illustrative of this point. He says:—"It is to be noted that the heavier sentences are not in general imposed by the superior or more intelligent class of judges, but chiefly by the provincial or rural magistrates." We have found much the same condition of things existant in this colony, but by whomsoever inflicted we think that the following sentences, taken almost at random from a large number of cases which have come under our notice, certainly reveal a striking discrepancy in the punishment awarded for practically the same offence in some instances, as well as between the punishment inflicted for some minor offences, as contrasted with crimes which are usually regarded as being of a more serious character.

Thus we find, for instance, that No. 10,463 receives ten years for larceny, whilst No. 10,530 only gets seven years for manslaughter. In the first-named case the offender, an unfortunate Asiatic, received two cumulative sentences of five years each, the practical effect being to increase his term of incarceration 40 per cent. beyond what it would have been under one sentence of ten years, although the offence was a comparatively trivial one, such as most European tribunals would have considered fully expiated by a very brief term of incarceration. We have called especial attention to this case in our Second Progress Report, considering, as we do, that while an injustice has been done to the prisoner the taxpaying public have in this case, as in many others, been penalised for no good purpose whatever. The contrast between the sentence passed on this unfortunate man and the seven years allotted to a prisoner found guilty of manslaughter after standing his trial for murder is sufficiently startling.

Then, not needlessly to multiply instances we see that No. 1,840 gets six months for larceny, whilst for the same offence No. 10,463 gets ten years. No doubt there are modifying and qualifying circumstances which have to be taken into account by the tribunals in all these cases, but it is nevertheless difficult to understand why in some cases robbery, accompanied with great personal violence, should be punished by a two years' sentence only, whilst a man, who was a first offender, but unlawfully received some stolen goods, got seven years as the penalty of his crime.

The obviously haphazard and irregular character of many of the sentences is one of the reasons which have led us to recommend that classification should proceed on the basis of the physical and mental capacity of the prisoner rather than upon the length of his sentence.

The only practical remedy for irregular sentences appears to us to be the constitution of a Court of Criminal Appeal, which should have the power to review all sentences passed.

We further desire to emphasise our previous recommendation that the criminal law should be codified.

#### SENTENCES—HOW TO BE IMPOSED.

With reference to the Court of Appeal proposed by us, we look forward to the time—although we do not regard it as immediately practicable—when the court, which finds a prisoner guilty, will have nothing whatever to do with the sentence imposed upon the prisoner.

When one looks carefully into the matter it is obvious that in the ordinary course of things all that the court which tries a man is really competent to do, is to say whether the prisoner at the bar has, or has not, broken the law. It knows nothing and can know nothing of the prisoner's mental or physical constitution, his congenital or acquired criminal tendencies, and a hundred and one other things which must nevertheless receive consideration if the mode of treatment of offenders against society is to cease to be purely empirical in its character.\*

As it appears to us, when a prisoner is on his trial there are two facts which have to be determined, or two questions to be answered. The first is: Did the prisoner do such and such a deed? That is for the jury to decide. The next is: Did he, by the act which he is declared to have committed, break the law? That is a matter for the judge. If both these questions are answered in the affirmative, there remains for decision the very important consideration of the mode in which the offender is to be treated. The determination of this point is one for which the judge, who sees the prisoner for the first time for a few hours in the dock, has obviously no especial qualification. † ‡

\*"It strikes me that the terms of the sentences inflicted on the prisoners by the courts are much too long."—J. Lilly, J.P.

†"The judge has no data on which to form an intelligent judgment of the degree of the prisoner's guilt; he is called upon to solve a most complex psychological problem, depending upon the prisoner's environment and training, on the prisoner's strength of mind and power of moral perception, on the attendant circumstances tending to palliate or aggravate the crime, and on all these questions the judge is compelled to rely largely on his imagination or his unenlightened sympathies."—J. Day Thompson.

‡"When the measure of punishment is fixed beforehand, the judge, as Villert says, is like a doctor, who, after a superficial diagnosis, orders a draught for the patient, and names the day when he shall be sent out of hospital, without regard to the state of his health at the time. If he is cured before the date fixed he must still remain in the hospital, and he must go when the time is up, cured or not."—Ferri.

Strange, as at first sight, this proposition may appear, the idea is by no means novel. It really underlies, although perhaps not in definite terms of expression, the conclusions of all the most prominent criminologists.

Its germ is to be found in the dictum of Beccaria, who, in 1770, in his *Dei Delitti e delle Pene*, laid down the principle that "The office of the judge is only to pronounce whether the action of the prisoner is contrary or conformable to the law."

It will be asked: Who, under those circumstances, would award the sentence?

This would be done by a Board of Medical Jurists. The prisoner would, by order of the court, pass into custody for an indeterminate period. The board would, after due examination from time to time, decide whether and when the prisoner was in the interests of society and of himself a fit subject for release. It would further decide the class of institution in which the prisoner should be treated.

As illustrative of the anomalies, which are not only possible but actually occur, under the present system, we would quote a case cited by His Honor Mr. Justice Bunday as having happened in South Australia:—

"A recent case in this colony forced this point upon my attention. . . . On the trial it was proved that no less than five previous convictions for a like offence had been recorded against the offender. Long terms of imprisonment had been imposed. On every previous occasion the lash had been awarded, the total stripes on the five convictions amounting to 70, 50 of which he had actually undergone, the remaining being countermanded solely because of the danger to his life their infliction would have entailed. Up to this time his only plea had been one of 'not guilty.'" On this being determined against him his punishment followed as a matter of course. To an ordinary observer there was nothing in his appearance or manner to indicate insanity of any kind; but of the fact of the commission of the offence in each case there could be no doubt whatever. At the last trial his friends raised the plea of insanity. The Crown Law officers very properly had him examined by the medical men who preside over the asylums here, and independent medical testimony was also called, and his insanity upon this particular point was established to the jury's satisfaction; the most startling feature of the medical evidence being that men afflicted with this particular kind of insanity are almost invariably among the purest-minded and purest-living during their lucid intervals, and they suffer intense mental torture for what they have done when their mental balance is restored. If this afflicted man was insane on the last it is fair to infer that he was on the previous occasions. . . . Had the prisoner in the case mentioned been so treated from the first, much suffering on his part, much annoyance to his fellow men, and much expense to the country would have been spared."

#### TICKET OF LEAVE REGULATIONS.

In our First Progress Report we advocated the entire abolition of the regulations now in force as being by common consent entirely obsolete. For these we would substitute, wherever it may be deemed desirable, in the case of prisoners released before the completion of their term of sentence, a system of police supervision on the lines of the English "Prevention of Crimes Act of 1871" and the "Habitual Offenders Act of 1869." Under these Acts the prisoner has to report himself to the police once a month. A central register of criminals is kept. This is printed and distributed to all police forces and prisons all over the kingdom. In addition, a "Distinctive Marks Register" is also printed and distributed to facilitate the identification of suspects.

REGISTRATION OF CRIMINALS.—A very desirable accompaniment to any system of dealing with criminals is a sound method for their registration and recognition. The system of M. Alphonse Bertillon is now being adopted by many countries—and the carrying out of this mode, although most effective, takes but little time, and requires no special training or intelligence.

#### CHARGEABILITY OF EXPIREES.

We have been informed by Mr. Longmore, Inspector of Charitable Institutions, that there were on 15th March last 195 expirees at the Mount Eliza Depot, and this may be taken as being about the average number. The cost of the maintenance of these persons falls very heavily, and, as it appears to us, unjustly upon Western Australia. The cost of these expenses is approximately £4,500 a year.

The mode of apportionment between the Imperial and Colonial Governments is prescribed by despatch from the Secretary of State dated 14th May, 1874. That despatch lays down the following rule:—"Any convict who, within three years of becoming free, either by expiration of sentence or by the receipt of a conditional pardon, shall be convicted of an offence for which he is sentenced to a punishment of two years or upwards, shall be maintained at the cost of the Imperial Government; but no claim whatever shall be admissible upon the Home Government in respect of the punishment of a convict for any fresh crime which he may commit after the lapse of three clear years from the date of his becoming free." Then, as to pauper expirees, the provision is:—"If for a period of ten years after becoming free a man shall have earned his own living, without ever becoming a burden on the public, then the Imperial Treasury shall be altogether free from liability about him, and any subsequent charge on his account must fall on the colony and not on this country, whether or not he may be disabled by some organic disease under which he labored whilst still a prisoner."

There are, at the present time, only about 60 persons in respect of whom claims, if and when they arise, can be established against the Imperial Government, but to these must be added 17, who are in the Lunatic Asylum and who are paid for by the Home Government.

We are of opinion that steps should be taken to urge upon the Home Government the injustice of throwing the burden of the cost of all these expirees on West Australia. We also feel grave doubt as to whether a large proportion of the expirees referred to above would not on investigation be found to be already properly chargeable under the terms of the Home Secretary's despatch of 14th May, 1874.

#### DIET.

Necessarily, a very great deal of our time has been occupied in enquiring into the food supply of Fremantle Gaol. This was a point upon which nearly every witness, whether specially invited by us or appearing as a volunteer, had something to say.

From the evidence of the prisoners themselves, supported by the result of our personal investigations, we have come to the conclusion that there is absolutely no ground for complaint as to the quality or the quantity of the food now supplied to the prisoners. There evidently was in the latter part of the year 1897 a strong feeling on the part of some of the prisoners that the diet was not all that it should be, but this grievance, whether ill or well founded, no longer exists, and we do not feel that it calls for any further comment.

**GREATER VARIETY OF FOOD DESIRABLE.**—In our opinion the dietary scale is altogether too generous, both in quantity and quality, for the requirements of any but long-sentence prisoners. On the other hand, it is not varied enough in character. Of the many suggestions thrown out to us, that of Mr. Townsend, the prison storekeeper, appears to be the most practicable, and that is to improve the quality of the soup by the addition of any vegetables in season, but to remove the provision for any particular amount of vegetables, potatoes or otherwise, from the dietary scale.

Potatoes, whether good or bad, have usually been very dear in this colony for quite three-fourths of the year, and at certain times have been almost unprocurable. Yet the prisoners seem always to have felt it to be an especial grievance that they could not be regularly supplied with potatoes of a quality far superior to those ordinarily served at the table of the honest artisan. Other vegetables, such as cabbages, pumpkins, and the like, are in season obtainable at very reasonable prices, but a hard-and-fast dietary scale, whereby each prisoner can demand his exact and full weight of vegetables, is more easily complied with by the supply of potatoes than by more watery vegetables, the substance and weight of which disappear in the cooking.

This is the reason assigned to us for the retention of potatoes on the prison dietary scale at a season of the year when poor private families must either dispense with their consumption altogether or supplement them with cheaper forms of vegetable food.

When fish, salted or fresh, is obtainable cheaply in large quantities at Fremantle, we think that fish might be, at the discretion of the authorities, substituted occasionally for meat, as is now done in some parts of Queensland.

**DIETARY SCALES IN FORCE.**—So far as animal food is concerned, the amount of meat allowed to prisoners generally averages throughout the Australasian colonies about 70 ozs. per week, whereas in England convicts "on industrial employment" only receive 31 ozs.

It is claimed for England that a relatively very low scale of meat diet is rendered possible by the great variety, which is the distinguishing feature of English prison diet. Thus we find that in England on no two days in succession is the same kind of food given for the principal meal, dinner. Convicts on "industrial employment" there have for dinner on Sundays, bread and cheese; on Mondays, mutton soup, with bread and potatoes; on Tuesdays, beef broth, bread and potatoes; on Wednesdays, mutton soup, bread and potatoes; on Thursdays, suet pudding, bread and potatoes; on Fridays, beef broth, bread and potatoes; on Saturdays, beef, bread and potatoes. Tea is not allowed.

It will thus be seen that only on one day in the week does the English convict on "industrial employment" get meat at all, except in the form of broth or soup.

At Fremantle, the same class of prisoner would receive daily 18 ozs. of bread, 10 ozs. of meat, 16 ozs. of potatoes, 2 ozs. of porridge, besides a little rice.

Some allowance must of course be made for the different and higher standard of living generally obtaining in Australasia as compared with Great Britain; but we agree with the Queensland Commissioners that a gaol diet should be "not more than sufficient to maintain health and strength," and the dietary scale of Fremantle appears to us to be far in excess of this requirement.

It is most unjust to the taxpayer that he should be called upon to feed the criminal classes on a higher dietary scale than the honest day laborer can afford to provide for himself and family, but such is at present undoubtedly the case.

#### DIETARY SCALES RECOMMENDED.

After very careful consideration of the dietary scales of the prisons of West Australia and of the other Australian colonies we recommend the following daily dietary scales, which are those now in force in Queensland, as being the best adapted to the conditions of our own colony. In this scale we recommend only the following modification—that tea should be allowed after three months to all good conduct prisoners, and should be stopped in cases of misconduct.\*

**RATION No. 1.**—To be issued to prisoners serving sentences not exceeding three months—

Bread	...	...	...	...	12 oz.
Maize or oatmeal	...	...	...	...	6 oz.
Meat	...	...	...	...	6 oz.
Vegetables	...	...	...	...	8 oz.
Rice or barley	...	...	...	...	$\frac{1}{4}$ oz.
Salt	...	...	...	...	$\frac{1}{2}$ oz.
Soap	...	...	...	...	$\frac{1}{2}$ oz.

**RATION No. 2.**—To be issued to prisoners serving sentences of over three and under twelve months, after three months' service on No. 1, also to debtors, prisoners under civil process, awaiting trial, under remand, and detained as witnesses for want of bail—

Bread	...	...	...	...	12 oz. (females 10 oz.).
Maize or oatmeal	...	...	...	...	8 oz.
Meat	...	...	...	...	8 oz.
Vegetables	...	...	...	...	12 oz. (females 8 oz.)
Rice or barley	...	...	...	...	$\frac{1}{4}$ oz.
Salt	...	...	...	...	$\frac{1}{2}$ oz.
Soap	...	...	...	...	$\frac{1}{2}$ oz.

\*The Committee appointed in England to report upon prison dietary scales says:—"It appears to us to be a self-evident proposition that imprisonment should be rendered as deterrent as is consistent with the maintenance of health and strength, whatever may be the sentence, and we think that the shorter the term of imprisonment the more strongly should the penal element be manifested in the diet."

RATION No. 3.—To be issued to prisoners serving sentences of twelve months and upwards after a service of twelve months on No. 2, when not at hard labor, and for all prisoners at hard labor serving sentences under twelve months—

Bread	...	...	...	...	16 oz. (females 12 oz.)
Maize or oatmeal	...	...	...	...	8 oz.
Meat	...	...	...	...	12 oz.
Vegetables	...	...	...	...	12 oz.
Rice or barley	...	...	...	...	$\frac{1}{4}$ oz.
Salt	...	...	...	...	$\frac{1}{2}$ oz.
Soap	...	...	...	...	$\frac{1}{2}$ oz.

RATION No. 4.—To be issued to prisoners when employed at hard labor, serving sentences of twelve months and upwards—

Bread	...	...	...	...	20 oz. (females 16 oz.)
Maize or oatmeal	...	...	...	...	6 oz.
Meat	...	...	...	...	16 oz. (females 12 oz.)
Vegetables	...	...	...	...	12 oz.
Rice or barley	...	...	...	...	$\frac{1}{4}$ oz.
Sugar (ration)	...	...	...	...	1 oz.
Salt	...	...	...	...	$\frac{1}{2}$ oz.
Soap	...	...	...	...	$\frac{1}{2}$ oz.

RATION No. 5.—To be issued to prisoners undergoing solitary confinement—

Bread	...	...	...	...	24 oz.
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RATION No. 6.—Low diet—to be issued to prisoners when reported sick—

Bread	...	...	...	...	12 oz.
Vegetables	...	...	...	...	8 oz.
Rice	...	...	...	...	2 oz.
Maize or oatmeal	...	...	...	...	4 oz.
Salt	...	...	...	...	$\frac{1}{2}$ oz.
Soap	...	...	...	...	$\frac{1}{2}$ oz.

RATION No. 7.—To be issued to prisoners when on the sick-list, and by order of the visiting surgeon—

Bread	...	...	...	...	12 oz.
Rice	...	...	...	...	2 oz.
Arrowroot	...	...	...	...	2 oz.
Oatmeal	...	...	...	...	2 oz.
Tea	...	...	...	...	$\frac{1}{2}$ oz.
Sugar	...	...	...	...	2 oz.
Milk	...	...	...	...	According to order.
Salt	...	...	...	...	$\frac{1}{2}$ oz.
Soap	...	...	...	...	$\frac{1}{2}$ oz.

RATION No. 8.—To be issued to children of female prisoners—

Bread	...	...	...	...	6 oz.
Meat	...	...	...	...	4 oz.
Milk	...	...	...	...	1 pint
Sugar (ration)	...	...	...	...	1 oz.
Soap	...	...	...	...	$\frac{1}{2}$ oz.

In all rations where meat is allowed, the quantity stated shall mean the weight of meat in an uncooked state, with bone.

We would further suggest that, with a view to checking the scorbutic tendency observed amongst many of the prisoners, an ounce of limejuice should be given to each prisoner twice a week from November to February, both months inclusive.

#### CONTRACTS FOR SUPPLIES GENERALLY.

We cannot find that any valid ground of complaint exists as to the quality or the price of the various articles supplied under contract to Fremantle Gaol. It was represented to us by one of the contractors that the responsible gaol officials had occasionally been somewhat exacting in their demands, insisting upon the fulfilment of the very letter of the contracts; but it must be remembered that the officials in question have no option but to see, both in the interest of the prisoner and of the taxpayer, both of whom have certain rights in the matter, that every article supplied shall be of the quantity, quality, and value contracted to be paid for by the public.

We personally inspected the food and the stores at Rottneest, and repeatedly did so at Fremantle, and found the same to be of excellent quality.

#### INSPECTOR OF PRISONS.

The office of Inspector of Prisons is at present filled by the Sheriff, who, in his capacity of Inspector, receives £150 a year. We think that the time has arrived when the two offices of Sheriff and Inspector of Prisons should be separated. As suggested elsewhere, we recommend the appointment of an Inspector of Prisons, who should fill the office of Governor of Fremantle Gaol.

#### THE SUPERINTENDENT.

The position of Mr. W. A. George, the superintendent of the Fremantle Gaol, has been rendered an exceedingly difficult and onerous one by reason of the absence of all proper rules and regulations for his guidance, to which matter reference has previously been made by us. The difficulty thus created has been aggravated by the herding together, without any classification, of long sentence and short-sentence prisoners—in fact, prisoners of every description.

Mr. George has, for some time past, filled the position of superintendent to the satisfaction of the Government, but he has had forced upon him responsibilities and functions which ordinarily come within the province of a governor rather than that of a superintendent.

In our opinion an Inspector-General, who would exercise all the functions of a prison governor, should be appointed.

#### WARDERS.

In addition to those warders whom we selected for examination a very large proportion of the officials volunteered to give evidence, and furnished us with much valuable information. In some cases there is a little dissatisfaction among the men, owing to uncertainty in the matter of quarters, some officials being allowed quarters in addition to their pay, whilst others are not. The average rate of pay ruling among the warders is low, having regard to the long hours and the extremely tedious and disagreeable although not laborious character of the duties which the warders are required to discharge.

We were pleased to find that a considerable proportion of the warders are skilled tradesmen, and could, if required, teach trades to the prisoners. We recommend that in future no warders should be engaged, but such as are competent to teach some handicraft, and that a reasonable educational test should be passed by candidates before they are appointed.

Upon this subject the latest report of the Comptroller-General of Prisons in New South Wales says:—"With a view to the gradual improvement of the status and morale of the subordinate staff, some very important reforms were brought into operation, by which, amongst other things, an educational test was applied to applicants for employment. This will have the effect of preventing any further additions to the ranks of illiterate officers. It has also been provided that the lower ranks will not be eligible for promotion until they pass a qualifying examination in various subjects connected with the theory and practice of prison work. It is intended to institute small libraries, containing works on criminology and prison management at all the principal gaols, for the use of the officers, and every inducement will be held out to warders to qualify themselves for examination and promotion. A minimum and maximum rate of pay has been established for each rank with regular yearly increments—contingent on good behaviour—leading from one to the other, and it is hoped that all of these changes will, as time goes on, raise the standard of efficiency."

We regret to find that there are no written or printed rules for the guidance of the warders in the discharge of their duties at Fremantle. Such general rules as exist are admittedly almost altogether inapplicable to the existing condition of affairs. As a matter of fact, the only instructions which the warders receive are of a verbal character, and are transmitted by the Superintendent or his immediate assistants to the subordinate officials.

We are of opinion that it is of the highest importance that every official, from the Superintendent downwards, should have the duties belonging to each position carefully and accurately prescribed in writing.

Even in such an important matter as that of firing upon escapees we find that the instructions to the armed guards are altogether verbal, and, to some extent, confidential. There appears to be considerable doubt on two very material points: (1) What are the precincts of the gaol within which a prisoner who attempts to escape may be fired upon; and (2) what class of prisoners render themselves liable to be shot at if they attempt to escape. Originally, no doubt, a warder who killed a man who attempted to escape from custody was indemnified if the escapee died as the result of a shot fired at him by one of the warders in charge. But that regulation applied to convicts, and it is not at all clear that it is equally valid in the case of prisoners who are not convicts. Then, the limitation of the proper precincts of the gaol is at present somewhat obscure and vague, whereas it ought to be very clearly defined.

#### PRECINCTS OF THE GAOL.

In regard to the "precincts of the gaol," referred to in the foregoing paragraph, we would draw attention to the fact that on the 16th May, 1851, an ordinance was assented to by the Governor vesting the land at Fremantle, referred to in that ordinance, containing an area of 39 acres and 1 rood, in the Comptroller-General of Convicts and the Colonial Secretary, in trust for Her Majesty for the prison purposes set forth in the preamble.

Since that date, however, this area has been considerably encroached upon from time to time for other purposes of a public and semi-public character. We understand that the Fremantle Hospital and grounds are part of this area of 39 acres, and also that a grant has been made to the Fremantle Municipality of that portion of the same area, which is now known as the Oval. Having regard to the definite and specific purposes for which the land was vested "for ever" under the ordinance of 1851, we do not know by what authority the alienations referred to have been effected.

#### EVIDENCE OF PRISONERS GENERALLY.

When endeavouring to group into different classes the somewhat voluminous evidence given by prisoners we were struck by the fact that the experience of the Queensland Commissioners, according to their report, had been almost identical with our own. With but slight verbal alteration we have adopted the exact summary given by the Queensland Commissioners.

1. That the printed rules hung up in the yard were incorrect or were violated.
2. That the visiting justice, when appealed to, sided with the superintendent.
3. That the doctor was neglectful, refused change of diet, etc.
4. That the punishments inflicted by the superintendent were vindictive and tyrannical.
5. That verbal rules, erratic and uncertain, were issued by the superintendent.
6. That petitions had been "hole-and-cornered," and not forwarded to the proper quarter.

As to the first point, so far as it related to the scale of remissions, there was undoubtedly foundation for this complaint, owing to a misinterpretation of the official scale, but we understand that the Hon. the Colonial Secretary has had this matter remedied.

As to the second and third charges very careful investigation showed that they were wholly without foundation.



In fact, the only really general ground of complaint which appeared to us to have any substantial justification was that verbal rules and instructions had been permitted to take the place of definite and fixed rules for the guidance of both officers and prisoners. To this matter we have made reference in a previous report. We quite agree with the superintendent, his subordinate officers, as well as the prisoners, that it is of great importance that a code of rules should be drawn up adapted to the actual requirements of the present day, the present rules and regulations being admittedly obsolete, impracticable, and unworkable.

#### THE GRAND JURY.

In this Colony the duties, which in England vest in the Grand Jury, are assigned to the Attorney General. If the Grand Jury is satisfied that the evidence in the possession of the Crown is inadequate to secure a conviction it throws the bill out. It is obvious that by the cessation of proceedings at this early stage an immense saving in the costs of needless trials is effected, whilst innocent men are not needlessly detained in custody. In Western Australia this part of the functions of the Grand Jury is too rarely exercised. The result is that, as compared with other countries, an unusual proportion of prisoners is sent up for trial against whom there never was any substantial case.

#### JURIES IN CRIMINAL CASES.

In our opinion it would be very desirable to appoint special Boards to revise the Criminal Jury Lists throughout the colony, and we believe that the standard of the juries might be raised by reducing the number of men on any jury to six, and paying them a higher fee than is now given.

#### GAOL ACCOMMODATION ON THE GOLDFIELDS.

Owing to the want of adequate gaol accommodation on the goldfields a vast amount of unnecessary expense is entailed upon the public.

Warden Hare says that under the system which now obtains in the case of any prisoner whose committal does not take place shortly before the Coolgardie Quarter Sessions, "it is necessary to transfer him to Fremantle Gaol, where he remains until the Quarter Sessions. He is then brought to Coolgardie, and, if sentenced, returned to Fremantle. Thus a prisoner may have to travel with police escort 1,200 miles, incurring expense and taking police from their legitimate duties. It would be a great convenience and saving of expense to have a gaol at Kalgoorlie or Coolgardie."

On the same subject the Commissioner of Police says:—"The cell accommodation at Coolgardie might advantageously, and at small cost, be adapted for the purposes of a local gaol which is badly required. In regard to the present cost of transport, the gaol pays for the prisoners, and we pay for the police. A local gaol at Coolgardie would result in a great saving, and it would enable the police staff to be reduced. Sometimes we have to send away as many as five constables, according to the number of prisoners to be escorted."

We recommend the extension and adaptation of the existing cell accommodation at Coolgardie in the direction and for the reasons indicated by the Commissioner of Police.

#### ROTTNEST ISLAND.

At the time of our visit to Rottneest there were on the island 51 natives and four European prisoners. In the case of the latter we understand that only such men are selected to be sent to Rottneest as are likely to be useful in connection with the routine work of the prison.

**CELLS.**—We inspected and measured the cells where the natives are locked up at night. Cells having the dimensions of 5ft. 8in. x 9ft. x 10ft. are occupied by three natives in each, whilst a larger cell 13ft. 7in. x 9ft. x 10ft. is tenanted by five natives. Cells of this cubic capacity are quite unfitted to the purposes for which they are used. We were informed that the floors are kerosened once a week, but the walls are very dirty, and the ventilation, such as it is, is of the most primitive and unscientific character.

For natives from the North-West, who have many of them been accustomed to roam about all their lives in a tropical climate and in a state of nature, it is difficult to imagine any mode of treatment more unsuitable in all its conditions than incarceration on Rottneest Island.

We are strongly of opinion that not only would a great saving to the country be effected in transit charges, but also that the health of the natives themselves would be greatly benefited by their being put to some remunerative open-air work within the latitudes to which they belong. The Superintendent in his evidence (question 956) said there is plenty of work to be found for the native prisoners in the North.

On the eastern side of the island there is a little good soil, some of it excellently adapted in patches for garden purposes, but it has hitherto been turned to little account.

Its isolated position renders communication between Rottneest and the mainland difficult, infrequent and expensive, otherwise, no doubt, vegetables might be grown here advantageously for other Government institutions.

The cost of supervision alone for the month of January last was £112, or about £2 per prisoner per month.

#### ABORIGINAL OFFENDERS GENERALLY.

Aboriginal offenders may be broadly divided into two classes—those who have lived in districts settled by white people, and have committed some offence against the latter; and those who know nothing of our laws, customs, or language, and who have done some deed contrary to our law, but possibly in strict conformity with their own tribal traditions and usages.

The treatment of this latter class has been the subject of very grave consideration in Queensland, where a like condition of things has long exercised the minds of the judicial and executive authorities. The Queensland Commissioners point out that the blacks have their own customary laws, and a breach of these laws is followed by punishment amongst themselves, in some form or other. It seems—they

say—on broad principles unjust that not only should an offender suffer punishment at the hands of his tribe, but that he should be punished a second time for the same offence by the law of the race which has dispossessed him of his hunting grounds and taught him the vices of civilisation.

In this view we concur, but we go further, inasmuch as we are satisfied that, except in the case of aboriginals who have spent the whole of their lives within the pale of civilisation, incarceration, unless it be for very short terms, has no beneficial influence whatever. In their case even more than in that of Europeans, it is essential that all punishment should be short, sharp, and effective, whilst if it is to be deterrent in its influence upon others it should, wherever practicable, be inflicted in the district where the offence was committed.

Confinement in gaol, especially at a distance from the scene of the crime, has no deterrent effect whatever upon the offender's fellow tribesmen. All they know, as the Queensland Commissioners point out, is that "the man has disappeared;" they have no conception where.

Rottnest appears to us to have none of the conditions essential to the proper treatment of aboriginal offenders, and the structural arrangements of the prison, as previously pointed out, are wholly unfit for their reception and detention.

#### DRAINAGE AND VENTILATION OF FREMANTLE GAOL.

In Appendix A hereto will be found an exhaustive report prepared for us by Mr. J. Bedforth, a sanitary engineer of large experience, with reference to the structural arrangements of Fremantle Gaol. We feel sure that Mr. Bedforth's notes, and the accompanying plans and sketches, will prove of great value to the Government when making the various necessary alterations in connection with the drainage and ventilation of the gaol.

#### SUGGESTIONS FOR REFORMS IN POINTS OF DETAIL.

Among the minor points which appear to us to call for some improvement at Fremantle, and in regard to which we have already communicated with the Hon. the Colonial Secretary, or dealt with them in our previous reports, are the following:—

**RAILWAY TICKETS FOR DISCHARGED PRISONERS.**—Every discharged prisoner, who desires to proceed from Fremantle to any point on the railway system, should be furnished with a ticket to his destination.

**CONFISCATION OF CLOTHING.**—At present the clothing of all prisoners serving a sentence of over twelve months is confiscated. This is felt by the prisoners, and appears to us to be very unjust.\* If it is undesirable to keep this clothing on hand for a long time, prisoners should have the option of disposing of it to their friends, or it should be sold on their account for what it will fetch.

**RULES AND REGULATIONS.**—All rules and regulations which affect the prisoners should be printed on cardboard and a copy hung up in each cell.

**DESTRUCTION OF CONVICT RECORDS.**—Following the precedent set by New South Wales, we would suggest that all the records relating to persons sent to this colony by the Imperial Government under sentence of transportation be destroyed at as early a date as may be found convenient.

**MEDICAL EXAMINATION OF ALL PRISONERS.**—Acting on a suggestion made by us the medical officer, Dr. Hope, now examines all prisoners on their reception at Fremantle. Formerly it was left to the prisoners themselves to report the existence of any ailment from which they might be suffering.

**AMALGAMATION OF LIBRARIES.**—We recommend that there should be an amalgamation of the Roman Catholic and Protestant libraries, which are now kept distinct.

**CONVEYANCE OF PRISONERS.**—A van ought to be provided for the conveyance of prisoners between Fremantle railway station and the gaol †

#### ECONOMIC EFFECT OF RECOMMENDATIONS OF THE COMMISSION.

It is difficult, if not impossible, to reduce to figures the exact pecuniary benefit which must result to the State if our recommendations receive full effect, but there can be no doubt that both the direct and indirect gain to the taxpayers will be immediately appreciable, and will ultimately assume very large proportions.

The taxpayer will directly benefit by—

- (a) Reduced cost of lower scale of diet for short-sentence prisoners.
- (b) Reduced cost of maintenance of prisoners as the result of a policy substituting short, sharp, and severe sentences for needlessly prolonged terms of incarceration.
- (c) Saving in transportation expenses of aboriginals.
- (d) Reduced cost of maintenance of Rottnest Island establishment.
- (e) Saving in maintenance of State children as result of the Salvation Army proposals.
- (f) Saving in cost of transport of prisoners from the goldfields.

The taxpayer will indirectly benefit by—

- (a) The gradual removal of foreign expirees, who are desirous of returning to their native lands, and who are never likely to become useful colonists.
- (b) The improvement in the moral and social status of ex-prisoners, which the deterrent and reformatory processes of treatment, which we propose will bring about.

#### THE RECORDS OF THE COMMISSION.

There have been over 80 sittings of the Commission; several of many hours' duration, and about 240 witnesses have been examined. With a view to bringing the mass of evidence thus obtained within reasonable limits the secretary was instructed to condense the transcript of the original shorthand notes

\*"I do not think that the clothing of any prisoner should be condemned or confiscated. It should be properly taken care of if the prisoner wishes to keep it."—J. Lilly, J. P.

†"A van for the conveyance of prisoners ought to be provided between Fremantle and the prison."—G. B. Phillips, Commissioner of Police.

by about nine-tenths. A perusal of the evidence is further facilitated by side notes, which state the various subjects dealt with by the witnesses, which are dealt with in abbreviated deposition form. This is a new departure in recording the evidence of Royal Commissions, but it has the merit of retaining, in a permanent form, all that is really wanted for purposes of reference, whilst very greatly reducing the cost of reporting and printing by many hundreds of pounds.

SUMMARY OF PRINCIPAL RECOMMENDATIONS OF THE COMMISSION AS SET FORTH IN THE PRESENT AND TWO PREVIOUS REPORTS.

1. General substitution of a policy of short, sharp, and severe sentences, combined with industrial occupation, in lieu of prolonged terms of incarceration with comparative idleness or profitless work.
2. Greater uniformity of sentences for offences of equal gravity.
3. Fremantle to be used as a gaol for prisoners undergoing terms of imprisonment for two years or under, and for the first three months of the term of all prisoners sentenced to two years or longer.
4. A labor prison to be established at Drakesbrook or Coolup, or other suitable place.
5. Establishment of a local gaol at Coolgardie.
6. Classification of prisoners.
7. Separate cellular treatment during first three months of incarceration.
8. Industrial employment of prisoners.
9. Remuneration of prisoners.
10. Adoption of Salvation Army proposals for juvenile offenders and for discharged adult prisoners.
11. Alternatively to adoption of Salvation Army proposals for juvenile offenders:—Subiaco to be a receiving house for boys and a house of detention for girls; the Reformatory at Rottneest to be done away with, and an industrial school established there for boys.
12. The commitment orders of magistrates in the case of juvenile offenders to be up to a maximum age of 16 years for boys and 18 for girls.
13. Boys under 16 and girls under 18 not to be sent to prison.
14. Discontinuance of sending native prisoners to Rottneest.
15. Abolition of flogging, dark cells, irons, and the crank as punishments for offences committed within the prison.
16. Revised dietary scales.
17. Issue of free railway tickets to discharged prisoners desirous of proceeding to any point on the railway system of the colony.
18. Abolition of the present ticket-of-leave system in favor of a modified form of police supervision, in conjunction with a general register of criminals and a record of identification marks on the Bertillon system.\*
19. Discharged prisoners of foreign origin desirous of leaving the colony to be in every way encouraged to do so.
20. Prisoners' clothing not to be confiscated.
21. Amalgamation of Roman Catholic and Protestant libraries.
22. Rules to be framed for guidance of all officers and prisoners; a copy of all rules affecting prisoners to be hung in each cell.
23. Separation of offices of Inspector of Prisons and Sheriff.
24. Appointment of an Inspector of Prisons to act as Governor of Fremantle Gaol.
25. Revision of the Jury Lists.
26. Establishment of Circuit Courts.
27. Codification of criminal law.
28. Constitution of a Court of Criminal Appeal, with power to review all sentences.

We have the honor to be,

Your Excellency's most obedient, humble servants,

ADAM JAMESON (Chairman).  
FRANK CRAIG.  
JAMES GALLOP.  
HENRY LOTZ.  
E. W. MAYHEW.  
M. L. MOSS.  
HORACE G. STIRLING.

Witness to the signatures of the Commissioners—

THOMAS HARRY,  
Secretary.

Perth, June 14, 1899.

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\*"The ticket-of-leave regulations are a relic of the old convict system, and I do not think it is desirable that the efforts of a ticket-of-leave man to obtain honest employment should be thwarted, as they must be, more or less, by the intervention of the police, provided for by the regulations."—G. B. Phillips, Commissioner of Police.