

PROVISION FOR  
INSANE CRIMINALS.

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A SUBJECT which is everywhere forcing itself upon public attention, is the question of suitable custody for criminals who are insane. There is a notable increase of this class in all parts of the country, and to-day, all of the more populous and prosperous States of the Union are being made to feel keenly the necessity of establishing some efficient, economical and humane provision for the large numbers of their dependents in whom crime and insanity are associated.

The increase of this class is undoubtedly due in part to the clearer recognition of the agency of insanity in producing crime; so that many who would at one time have been held wholly responsible for their offences, and punished accordingly, at present are plainly seen to be victims of disease. It was formerly held that any person who in general terms knew right from wrong, or had the intelligence of a child of seven, or was not altogether imbecile, must be answerable before the law for his or her misdeeds. If mentally defective, it must yet be proven that the person "doth not know what he is doing, no more than an infant or a brute or wild beast."

Afterwards, it was required that the existence of insane delusions should be demonstrated, and that the crime should have been a direct outgrowth of these. Later, the knowledge of right and wrong as a test of mental integrity was restricted to the particular time and act. Then, a consideration not previously adduced, began to assume prominence, and this was the ability of the individual to *control his own acts*; and at the present day, it is unhesitatingly admitted by legal authorities, by public opinion, and by medical men alike, that offenders may and do commit crimes for which they are not answerable before the law by reason of disease

depriving them of power of self-restraint in the presence of a criminal volition or impulse. It is recognized that the will or the instincts and passions may become diseased, leaving the intellect and the abstract reasoning faculties apparently intact. Indeed, in recent years, we have seen the pendulum swinging far to the other extreme, and dangerous applications of the doctrine of moral insanity, and transitory mania, excusing or extenuating crimes which public sentiment held to be conscious and malicious infractions of law.

Public sentiment is, however, an unsafe guide in this matter. It follows a pendulum course itself and is swayed, now this way, now that, as the gravity of the fundamental interests of society, or the secret springs of sympathy and sentiment may direct. We have had in early times the punishment of numerous innocent insane persons; in later times a revulsion of feeling in favor of insanity as an excuse of crime; then a reaction against the improper use of this plea; and with each ebb and flow of popular feeling, guilty men have escaped and innocent men have suffered.

I wish here at the outset to disclaim all sympathy with the excessive and injurious benevolence which sees in all crimes, only the misfortunes and not the fault of their perpetrators, and inveighs against the present defects of society as the responsible agency. It may well be that the fatal snare of evil inheritance and environment makes criminals in many instances what they are, and that with the external conditions reversed, the relative position of the criminal and the executioner of the law would also be reversed; but the vicious and destructive influences which would annihilate all order and all progress, can only be met by stern repression and control. It is true that society has a duty toward the criminal beyond simply immuring him where he can do no harm; but swift and certain punishment is also an essential part of that duty, and the direction in which progress is to be made is (1st) in the more careful adjustment of the penalty to the measure of responsibility; (2d) in the judicious introduction of agencies within the prison which will carefully foster whatever there may be left of right-mindedness in the individual criminal.

The increase of insanity among criminals, spoken of above,

is remarkable not only through the greater number of acquittals of crime on plea of insanity, but also in the greatly augmented numbers of convicts who are found insane in the penitentiary, and it is with these latter that the present paper is more especially concerned.

In discussing this subject, I have propounded and sought to furnish an answer to the following questions:

- I. What constitutes an insane criminal?
- II. How large is the present number of such persons?
- III. What is the present provision for this class?
- IV. What are the defects of the present system?
- V. How are these defects to be remedied?

The consideration of the first question—I. What constitutes an insane criminal?—involves a brief review of the leading aspects in which we see insanity and crime associated. Strictly speaking, insanity and crime are combined in as many different forms as there are insane persons who have committed crimes, or criminals who have gone mad. The two mischievous elements mingle in every conceivable degree and variety, and in the presence of a given infraction of law, it is often impossible to measure with certainty the blind propulsion of insanity, or the wilfulness of depravity. Between the felon's fault and the madman's misfortune, as between a threatening Scylla and Charybdis, human justice often finds a difficult, sometimes a disastrous course. Those who were held to be the most abandoned criminals have often been found insane, and irresponsible. Monstrous crimes have been committed with *malice prepense* by palpable lunatics; while insanity is urged as a specious and dangerous plea in extenuation of crime. There are criminals who simulate insanity with surprising and sometimes successful skill; criminals who have inherited and grown up in such depravity that they cannot justly be held wholly responsible; criminals whose own vices have rendered them incapable of controlling their acts. There are the epileptic criminals, a most perplexing class; and indeed among all criminals the percentage of insanity is at least sixteenfold higher than in the community at large.

On the other hand, there are lunatics who know perfectly well the nature of their crime; who are able to distinguish

right from wrong in the abstract, and who act with a criminal motive, thus answering in no respect to the popular or even the "expert" idea of insanity. There are lunatics who are wholly delirious at the time their crime is committed, and have no subsequent recollection thereof. Other lunatics plan and execute their crime deliberately, methodically and skillfully, alleging some fantastic reason in its justification. Insane persons are met with who *feign* insanity in the hope of escaping from the consequences of their crime; and again persons undoubtedly insane are encountered who are capable of reasoning so far as to rely upon their insanity for relieving them from all danger of punishment for crimes they may commit.

But for the present purpose, all these cases, both of lunacy and crime may be brought under two heads: the *First* comprising those in which crime is the essential and dominant element, and insanity a complication; the *Second*, those in which insanity is the primary and governing agency, overshadowing or extenuating the crime.

The first class embraces those who are always and everywhere criminals. Their insanity may be independent of their crime, or the crime with its consequences may be the exciting cause of insanity, or the insanity the cause of the crime; but throughout they bear the character of criminals.

In the second class are comprised those who are essentially insane, their crime often a direct result of the insanity, but often, also, traceable to causes such as produce crime in sane men.

The answer to our first question then is found in the description of the first class: Insane criminals are those who bear unmistakably the criminal character and history, whatever the relation of the insanity to the crime.

The second class are the "criminal," but non-culpable or irresponsible insane.

However difficult it may be in practice to determine to which of these classes a given individual may belong, the two are in themselves manifestly widely different, and should be differently managed; yet the law has been slow in recognizing this distinction, and practically proceeds upon the principle that all insane are birds of a feather — a state of mind trace-

able to the time when insanity and possession by the devil were regarded as identical states; and lunatics and felons being equally outcasts from society, were treated with equal barbarity.

To-day it may be that there is a sentimental tendency to run to the opposite extreme in dealing with human depravity, and to ascribe the responsibility of all crime to the unfavorable surroundings or neglected education of the criminal; but jurists and legislators have been, as a rule, sufficiently slow to feel this influence. Indeed, its existence may be regarded as a reaction against a too stringent application of unsatisfactory or worn-out tests of mental integrity. The law is necessarily conservative, and in cases where insanity and crime have conjointly come under its ban, society, instead of the criminal, has largely reaped the benefit of the doubt.

We enter now upon the inquiry — II. How large is the present number of insane criminals?

The facts and figures presented have been derived from published reports of prisons and from correspondence with their officers, and it is believed will present a state of affairs which has not been fully appreciated hitherto.

I commence by condensing from a very interesting communication received from Thos. S. Wilkinson, Warden of the Maryland Penitentiary, as follows: "We have now in prison, P. T., sent for ten years for murder; he was insane when received; A. G., deranged and paralyzed; he was but little different when received; J. B., sent for fratricide, has epileptic fits; W. W. and J. H., both insane when received, and both kept constantly locked in their rooms; H. S. confined to room since admission; rarely speaks." Of the six, three are white, three colored men. The average number in the prison is 726.

Mr. Wilkinson also gives the details of nine other cases that have been in the prison since 1872; five of the number were insane when received; one killed a fellow convict. He cites also two cases of suicide in 1877 and 1878 respectively, both Germans; both worked regularly up to time of suicide. He says, "If cases are of a mild type, we of course keep them till the expiration of their sentences."

In regard to this Institution, Dr. C. W. Chancellor, in his able "Report on the Public Charities of Maryland," says (p. 78): "Among the deaths (in the year 1876) were four insane men, who, according to the statement of the physician in charge, had been in close confinement for years. The recent action in granting provisional pardons to this class of prisoners, in order that they may be treated in the asylum, is certainly very humane, but proper provision could and should be made for their care within the prison walls, as some of the insane in the State Asylum are very sensitive about being forced into companionship with convicted felons."

The Ohio Penitentiary report for 1877, speaking of "The Insane" (p. 37), says: "The whole number of this class that has been on hand at different times during the year, was eighty-five. This, however, includes imbecility and dementia." 29 of these were sent to the Asylum, 39 remained in the Institution, 12 had been discharged on expiration of sentence. The average number of prisoners for 1877 was 1,592. Of the above 85, I infer that 50 would properly be called "insane" from the subjoined "Joint Resolution adopted by the last General Assembly," given in the report for 1877 of the Ohio Board of State Charities (p. 102): "WHEREAS, there are at present some fifty odd convicts in the Penitentiary for whose proper treatment no adequate provision is made." The resolution goes on to recommend the transfer of these to the State Insane Hospital, and concludes: "RESOLVED, That the subject of permanent provision for proper hospital care of insane convicts be referred to the Board of State Charities and to the Chairman of the Board of the Penitentiary, and that they constitute a commission to take the subject of such permanent provision under consideration and report to the next General Assembly such plan of relief as in their judgment may seem best."

The California State Prison Report for 1876 and 1877 says (p. 29): "During the last two years we have had 20 cases; six went to the Asylum, five recovered, nine are still in prison." A fair estimate for the number of insane for 1877 would be 12. The average number of prisoners for 1877 was 1,211. At this prison, of the total number discharged from

the beginning, 6,683, 72 have been sent to the Asylum as insane.

In this report, J. E. Pelham, M. D., the physician and surgeon to the prison, says (p. 28): "The prison is destitute of proper accommodations for the insane. \* \* It is an unavoidable necessity that insane cases, when they appear, should be retained in prison for a time in order to prove them; for their diagnosis is so difficult that the science and skill of the most experienced physicians will often be at fault. The conductors of our insane asylums, on account of the extra vigilance necessary to be exercised to prevent escapes, are probably disposed to discourage the introduction of insane criminals into their wards. Therefore, as the prison must of necessity be custodian of insane persons for a time, it seems to me that it is just a simple duty that proper provision should be made for their care and management. At present they are confined in cells in the main cell-buildings, and are not separated from the other prisoners except by the cell walls, and they often render night hideous by their ravings, thus disturbing the sleep of those who must labor during the day. To avoid this state of affairs, there is at present but one remedy—the dungeon, which has frequently to be used for the purpose. With present accommodations for treatment of such cases, results are unsatisfactory, and remedial measures cannot be resorted to, with reasonable prospects of success."

In New York, at the Asylum for Insane Criminals, 38 convicts were received in the year ending Sept. 30, 1877. They came from Auburn (17), Sing Sing (8), Albany (6), Clinton (6) and the State Reformatory (1). Deducting these from the 104 remaining in the State Criminal Lunatic Asylum Sept. 30, 1877, and also 10 per cent. of the remainder for the unconvicted cases (which latter proportion their statistics from the beginning show to be about correct), we have 60+38=98 the number of insane convicts in New York at that time by a moderate computation. For the same time, the average prison population of the four State Prisons was 4,614.

The "Asylum for Insane Criminals," at Auburn, was the first and remains the only separate establishment of the kind in the country, and its admirable workings and the excellent

policy which founded it are recognized and acknowledged wherever the question of provision for insane criminals has received attention. The committee appointed by the resolutions of the Ohio Legislature above given, visited this institution, and it is understood, will report favorably to the building of a similar asylum in Ohio.

The Report of the Wisconsin State Prison for the year ending Sept. 30, 1877, gives 17 insane in its population of 290. Five of these are violent, 11 mild, and one female not characterized.

The average prison population of Pennsylvania for 1877 was 1,820; 1,040 at the Eastern Penitentiary, and 780 at the Western (Rep. B'd Pub. Charities for 1877, p. 15). In regard to the insane convicts of the State, Diller Luther, M. D., Secretary of the State Board of Charities, writes me: "The entire number in and outside of the asylums may perhaps be 100." In the Report of the Eastern Penitentiary, at Philadelphia, for 1877, p. 69, the medical officer, Dr. Comegys Paul, says: "During the year, 11 men were sent here with developed insanity, six others were epileptics, many are registered of dull intellect. Two men developed latent insanity during the year." A table is also given showing the whole number of insane from 1851 to 1877. This was 30 out of a whole number in confinement of 6,511—an average annual percentage of .46.

At the Connecticut State Prison, the Report of Jan., 1878, gives three insane, one of whom it is necessary to keep confined in his cell. The warden remarks, "They need the benefit of the State Asylum, or some other provision suited to their condition." From the medical officer I also learn that there are now five in the State Asylum. The population of the prison is 266.

The medical officer of the Iowa Penitentiary writes me that in 12 years, out of an average population of 350, 12 have been sent to the asylum, six of these in the past 18 months. The physician at the Additional Penitentiary of Iowa reports three sent to the asylum out of a total since the beginning (four years ago) of 440 prisoners.

The Northern Indiana Prison Report, Oct. 31, 1877, calls

for 12 cells to be built especially for its insane. The average prison population is 648. It is reasonable to suppose that these special cells are only asked for for the confinement of the violent and uncontrollable insane.

The Report of the Indiana Prison, South, notes 10 cases of epilepsy among its prisoners, among which there could not fail to be, as every physician knows, much dangerous insanity.

The Kansas State Penitentiary Report, for 1876, gives a "daily average confinement of the insane of  $3\frac{1}{2}$ , with a population of 406." The medical officer in his report (p. 40) remarks: "There are confined here as prisoners several who are and have been insane, some of them for years and to all appearance, hopelessly. The law provides that when any prisoner has become insane \* \* \* the warden shall turn him over to the Superintendent of the Asylum, and take his receipt therefor. What equivocation is there here? None, it is absolute. And yet in the face of the law this has been denied us positively, though they had plenty of room at the time. Now, we have no wards for the insane, we have no facilities for their treatment of any character whatever. \* \* \* Is it meet and consistent to keep a noisy maniac within a hospital ward, among cases of sickness, where quiet is an absolute essential? We have no other. Is it consistent to keep such an one in one of the cells where the prisoners who labor hard all day, need a quiet place at night?" This presents one side of the picture, and for the other, I trust it is correctly set forth elsewhere in these pages. Without countenancing any violation of law by asylum authorities, I would answer the question of the offended prison physician by asking another—Is it "consistent" (that is just the word) to force the contamination which the felonious insane cannot fail to carry with them upon reputable insane persons, and fasten upon the asylum the stigma which is inevitably connected with convicted and notorious crime? In principle both the asylum and prison authorities are right, and their difference can only justly be met by relief, extended to both in the shape of separation of the convict insane from prisoners as well as from ordinary insane.

The New Jersey State Prison Report for 1877 gives an

average number of prisoners of 810, of whom two were sent to the Asylum.

In Massachusetts, I have no precise information as to the present number of insane convicts. Dr. Nathan Allen states it at "not over 20 or 25." From information kindly furnished me by Hon. Sidney Andrews, Secretary of the State Board of Charities, I learn that in the ten years from 1864 to 1873 inclusive, there were "discharged as insane" from the State Prison 19 out of a total number, 1,985. In the same period, from a total in the jails and houses of correction of 97,642, 266 were discharged as insane. From the "House of Industry," out of a total of 22,546, 36 were discharged as insane. In the State "Workhouse," out of 1,791, apparently none were found insane in that period, but Mr. Andrews informed me the past summer that 45 insane had since been reported from that institution. It is necessary to state, that in the jails and houses of correction, the terms are very short, and the same individual undoubtedly appears over and over again. The above figures give, out of the approximate number in the prisons of Massachusetts for ten years, 123,964, 321 discharged as insane. There is a special prison for women at Sherborn, Mass., containing 460, of whom eight are insane. The present number in the Massachusetts State Prison is 750, of which number five are in the cells for insane, seven are weak-minded.

The Report of the Nebraska State Prison for 1875-6, gives one insane and three epileptic out of an average of about 66 prisoners.

The Nevada State Prison Report gives, three sent to the asylum from 1875 to 1877, with an average of not over 130 prisoners.

The warden of the Minnesota State Prison informs me that he has four confined as insane, and one has been sent to asylum in past year. Present number of prisoners 166.

The warden of the Michigan State Prison writes that he has "803 convicts, 10 of whom are insane" (May, 1878).

In the State of Maine, there are seven insane convicts in the Insane Hospital. The state prison has also a department for confining the insane; number there not known. The average number of prisoners for 1877 was 188.

In the State of Illinois at the present time there are 28 convicts in the three State Insane Hospitals. The present number of prisoners in the State Penitentiary at Joliet is 1,665. There are 192 additional at Chester, where the new Prison is being built.

From figures kindly furnished me by Major McClaughry, warden of the Illinois Penitentiary, I learn that in the 18 years from 1860 to 1877 inclusive, 71 convicts have been sent to the Asylums of the State. From 1871 to 1877, during which years the average prison population has been 1,381, the average number of insane convicts each year has been  $6\frac{2}{3}$  or .47 per cent. of the prison population.

Recapitulating the figures given above for the several institutions and states, and in every instance where there is doubt, making an under-, rather than an over-estimate, we have as follows:

TABLE SHOWING AVERAGE OR TOTAL PRISON POPULATION  
IN SEVENTEEN STATES, AND NUMBER OF INSANE  
CONVICTS IN PRISON OR ASYLUM.

STATE.	NO. IN PRISON.	NO. INSANE.
Maryland .....	726	6
Ohio .....	1,592	50
California .....	1,211	12
New York .....	4,614	98
Wisconsin .....	290	17
Pennsylvania .....	1,820	75
Connecticut .....	266	8
Indiana .....	646	10
Kansas .....	406	3
New Jersey .....	810	2
Massachusetts .....	750	20
Nebraska .....	66	1
Nevada .....	130	3
Minnesota .....	166	5
Michigan .....	803	10
Maine .....	188	7
Illinois .....	1,857	28
	<u>16,341</u>	<u>355</u>

The proportion of insanity among the whole is one insane person to 46.03 convicts, or 2.15 per cent. A percentage at least 16 times as great as is found among the population at large.

This is a rough statement with regard to the convict insane of the country so far as I have been able to elicit information on the subject. It is incomplete, and certainly does not exceed the truth with regard to the proportion of this class. Certain states give no account of any insane, as Texas, New Hampshire, Alabama, North Carolina, Kentucky, Tennessee, and from the remaining states no returns have been obtained. Are we to suppose that the last mentioned states are exceptions to a rule prevailing in all the most enlightened, progressive and best-policed commonwealths, or that their prison authorities have overlooked, or failed to report the frequent complication of crime with mental alienation? I hope to answer this question satisfactorily, as well as to present an additional amount of detailed and tabulated information with regard to a considerable number of insane convicts in a future paper.

As bearing upon this point, I will here quote from Dr. Dugdale's remarkable researches in his work entitled "The Jukes,"\* wherein are given the results of a careful examination of 233 convicts. Among these were found 49, or 23.03 per cent.; nearly one in every four, who belonged to "nervously disordered stock."—"Under this head are included all convicts who are or have been afflicted with insanity, epilepsy, chorea, paralysis, or other nervous disorder, or who have any blood relations who are or have been subject to any of these disorders. The number tabulated is greatly under the actual facts, because so many are either orphan or abandoned children who know nothing of their ancestry. \* \* \* This close relation between nervous disorders and crime runs parallel with the experience of England, where, 'The ratio of insane to sane criminals is 34 times as great as the ratio of lunatics to the whole population of England; or if we take one-half the population to represent the adults who supply the convict prisons,

\* "The Jukes" (3d Revised edition), by R. L. Dugdale, M. D., member of the New York Prison Association Executive Committee. Putnam's, N. Y., 1878 (p. 86).

we shall have the criminal lunatics in excess in the high proportion of 17 to 1.' (Dr. Guy in the *Journal of the Statistical Society*, Vol. XXXII., p. 16.)"

Dr. Bruce Thomson, Surgeon-General Prison, Perth, Scotland, also says: "On a close acquaintance with criminals of 18 years' standing, I consider that 9 in 10 are of inferior intellect, but all are exceedingly cunning."

Returning to Illinois and the percentage of insane among its convicts; it is noticeable that this falls decidedly below the average for the other states, but with the very large prison population of the state, even this proportion gives a considerable number of the class to be provided for.

Taking past experience as a guide for the future, we shall have not less than nine annually found insane in the two penitentiaries, and we shall be fortunate if the actual number does not much exceed this. With the 28 now in the Insane Hospitals, this makes say, 37 before the close of another year. And on this basis at the end of five years there will have been in all 182 cases. Deducting from this a liberal percentage of .15 for deaths and .10 for recoveries, there will remain a fraction over 161 still in custody. But the great and growing State of Illinois can hardly fail to pay the penalty of prosperity by seeing its criminal population increase, and with these the number of insane criminals; especially as the experience of other states shows that Illinois has enjoyed thus far an unusual, and probably fortuitous exemption from this peculiar burden.

The above may be taken to represent the numbers of the strictly convict insane. But there is another group of the insane who are properly designated as "insane criminals," and justly belong with this class. I refer to such of the insane who are acquitted of crime on the plea of insanity, who yet give unmistakable evidence of such depravity and previous evil life as unfits them for association with the reputable insane. There will always be a certain number of criminal insane persons who will be universally recognized as free from any moral taint of crime; like the insane fanatic who sacrifices a life from exalted religious fervor, or the epileptic who destroys his friend in delirious fury; the mother whose madness impels her to kill her own child, or the maniac



who commits larceny under a hallucinatory command; but the large majority of crimes committed by insane persons are the outgrowth of mingled depravity and insanity. On this point Dr. W. W. Godding, now Superintendent of the Government Insane Hospital, at Washington, formerly Superintendent of the Taunton Asylum, thus expressed himself in a letter to the Board of Charities of Massachusetts (Eighth Annual Report, p. 130): \* \* "It must be admitted that the previous education has frequently something to do with the type of insanity, and that other things being equal, those men whose habits of life and moral training are of a low order are more apt to be violent and homicidal, \* \* and even in cases of special delusion, sometimes, the habit of a better life remains." This principle will certainly hold with equal force in regard to low and bestial crimes. But in the present state of affairs, a man acquitted of rape, or a woman of keeping a house of ill-repute,\* goes to the State Asylum to mingle with innocent and reputable persons, whose peculiar misfortune should doubly assure them of protection.

The number of this latter subdivision of insane criminals increases every year; nine of them have been received at the Central Illinois Hospital for Insane, six at the Northern, and five at the Southern, since the law committing them thus went into effect in 1872. Of these 20 a large proportion would be found in all respects more proper associates for convicts than for the ordinary insane, and if an asylum for insane criminals existed in the state, would undoubtedly have been committed there by the court conducting their trial.

III. What is the present provision for insane criminals? A brief paragraph will contain all that can be said in reply to this question, whose solution indeed just escapes the *reductio ad absurdum*, by the fact that in one of the States something has been accomplished in the way of adequate provision for its insane criminals. New York, as stated above, has its asylum at Auburn, now accommodating 125 of this class. The new Massachusetts Penitentiary has an insane department designed for 25 or 30. The Maine State Prison has

\* This latter is not an imaginary but a *real* case.

also separate cells for the insane. Beyond this, a joint-resolution passed by the Legislature of Ohio, and a standing disagreement in Pennsylvania between the Board of Charities and the superintendents of the asylums of the State, since the year 1873, are all that there is to indicate what is nevertheless the fact, that the injustice and inexpediency of the present system, and the crying need of a better, are recognized by every intelligent citizen who has given attention to the subject. There are in the various states various modifications of the plan, or want of plan, now in vogue. But the general features are the same. Either no special treatment is provided for the convict insane, or they are sent to the ordinary asylums and hospitals. Further, all such criminals as are acquitted on the ground of insanity, when not allowed to go free, are also sent to the asylums for insane. In Illinois, convicts are sent from the penitentiary on the certificate of the prison physician, and the medical director of the asylum must receive them *volens volens*, although in all other cases he is given full power and discretion as to receiving cases. Here, also, all persons acquitted of crime on plea of insanity must be received at the asylums.

In Maine, I am informed by Dr. E. C. Neal, of the State Insane Hospital, there is a law which enables the judge to order a person charged with crime, for whom the plea of insanity is to be made, to the Insane Hospital for observation till the next sitting of the court, and subsequent proceedings are governed by the report of the superintendent upon his sanity.

In Michigan, in Maryland, and many other states, the Governor may pardon, commute or suspend the sentence of an insane convict and have him transferred to the Asylum, if in his opinion it is wise to do so.

In Massachusetts, a commission including one or more of the asylum superintendents decides upon the case of convicts, and their removal is governed, I believe, by the Board of State Charities.

IV. Our fourth inquiry is as to the "Defects of the present system." Some of the objections to insane persons of the criminal class and character being sent to the asylum to

mingle there with the non-felonious insane, are obvious enough, and probably no one would be found to dispute their abstract justice, but a practical exposition of the injurious workings of the present course seems nevertheless to be needed. I will endeavor to make this, and my remarks may be embraced within three divisions: First. The unfitness of insane criminals for association with the ordinary insane. Second. The impropriety of attempting to confine convict and criminal insane in an asylum of ordinary plan and construction. Third. The inexpediency and extravagance of such a course.

First: the unfitness of insane criminals for association with the insane who are free from crime. It is scarcely necessary to expatiate upon this. Among the 19 convict insane whose near acquaintance it has been my peculiar privilege to form in the hospital, have been: one professional pickpocket; one "song and dance man" from the lowest slums; one female receiver of stolen goods; two ravishers; three murderers; two burglars. Among the four acquitted of crime because insane, were one incendiary; one female keeper of a house of ill-repute; one murderer, who well deserved the name of a "cowardly assassin;" and all of these, except three or possibly four, retained their mental aptitude, force of will and moral (or immoral) traits in full activity.

Is not the moral infection of such as these in the hospital as much to be dreaded as any physical infection? If one sickly sheep can infect the flock, how much pestilence will these moral lepers bring with them? Are not the misfortunes of the insane already sufficient without subjecting them to this further degradation? Is it possible to suppose that the people of any community or state, into so many of whose families the ominous spectre of insanity sooner or later stalks, wish the afflicted ones to dwell familiarly with such companions? It may be asked why the separation of these cannot be made within the asylum walls. This I intend to consider in the next paragraph. It may also be urged that insanity masks the evil traits of these persons, but that is the fact only to a very limited extent. Indeed, those who are most familiar with the insane well know that, except in the comparatively

rare instances of complete decay and destruction of brain tissue, the former leading characteristics of the individual remain, and the direction and chief manifestations of the insanity will be determined thereby. This is why there is a probability, if other things are equal, that any insane person who commits a crime, whether culpable in the eye of the law or not, is of an inferior moral organization; though it is at the same time true that a small number of persons of reputable, if not excellent character, are constantly being driven by insanity into crimes as detestable to themselves in their normal state as to any right-minded man. It should therefore be possible to find an appropriate place for each class of insane perpetrators of crime. A certain proportion of them might well go to the general insane asylum, possibly an occasional convict might properly go there; and rightly constituted authorities should determine this matter, in accordance with the actual character and merits of the individual—either courts or special commissions or the Board of State Charities. What I contend for is, a separate and special provision for the majority of insane criminals.

Let it not be supposed that an attempt is made to give any but a sober and truthful color to this picture. Concerning the remainder of nineteen convicts above mentioned, details could be given as unpleasant to contemplate as any spoken of. Insanity but seldom renders its victims better than before in any respect, more generally indeed, it adds darker and more repulsive features to the character. The insane criminals (of whom over sixty have been in Jacksonville hospital, twenty-three at Elgin, and sixteen at Anna, in the five or six years since the two latter hospitals opened) retain in large part all the cunning which their career of vice and crime has given them. They are much more prone than the rest of the insane to commit dangerous and violent acts; to be concocting plans of escape, rebellion, or mutiny; to torment the feeble and irascible about them; to teach new lessons in depravity to the pupils so easily found around them.

I do not wish to claim that there are not among the non-felonious insane, individual cases as revolting and disagreeable in some respects as any found among the criminals, or that the

contamination of criminal association is felt or remarked upon *consciously* by any great number of the patients; indeed, I have seen occasionally a convict who was well liked and familiarly treated by his fellows in the wards; but the fact that there are bad cases among the non-criminal insane, and that many of these latter are too weak in intelligence or will to resist or recognize evil influences, only renders more clear the evils of the present system. The weakness of the insane entitles them all the more to protection, and because there are inevitably a few vicious among them, we are not justified in increasing the number still further. Moreover, there are numbers among the insane who do most keenly feel the infamy of the association thrust upon them. Did space permit, numerous illustrations of this might be given; let one suffice:—A friend of the man murdered by the above-mentioned "cowardly assassin" came to the asylum where the latter was confined, and as he improved was offered a place in the same ward with him, but he refused the proffered change, though for his interest in other respects, scorning to meet or associate with the murderer of his friend.

Second.—"The impropriety of attempting to confine convict and criminal insane in an ordinary asylum."

A natural inquiry to one not familiar with the merits of the case, would be; "Why cannot these criminals be kept by themselves?" They might indeed be kept permanently locked in their rooms, but this is just what they are sent to the asylum to escape, because it is unjust and inhuman, and destroys every hope of recovery. If, now, the difference in construction and discipline between the penitentiary and the asylum be taken into account, the objections to separation within the asylum are plain enough. The penitentiary is a penal, the asylum a charitable institution, for the care and cure of its inmates. These convicts and criminals when brought to the asylum are placed in the wards with other patients. They cannot be separated from the other inmates and be placed in a ward by themselves. The number in any one institution is not sufficient for this, moreover much injury and injustice would result to the criminals themselves from such mutual contact where they could

not be properly classified;\* and finally, it would be folly to congregate them thus unless the penitentiary regime could also be introduced. The asylum has no machinery and should need none, such as is required for the safe-keeping of this class. There are no cells built of solid masonry, there is no system of quasi military guard and discipline. There is nothing of the penal character; on the contrary, with the insane who are free from crime, it is a well-recognized principle to extend freedom to the farthest limit compatible with welfare and safety; and the cardinal principles on which the asylum is conducted cannot be subverted for these exceptional inmates without great injustice to those for whom the institution is built and who have the first claim upon it. There are hence numerous opportunities for contact with all classes of inmates which cannot be avoided. The insane criminals inevitably enjoy an amount of liberty and receive privileges which the ordinary insane are indeed entitled to, but which the others are for the most part only capable of abusing.

The greater opportunities for escape must further be taken into account. It is well known what rigidity of discipline, security of construction and ingenious watchfulness are required to keep convicts when once they have been caught. The asylum, however, is not built to withstand the assaults of the jail-breaker, and should not be so built, since the enlightened management of the insane at the present day shows more and more clearly that their liberties may be carefully and slowly enlarged. The result of this state of affairs is, that sooner or later, those criminals who retain their cunning (as most do), and so many of whom are skilled in all the "cracksmen's" arts, make good their escape. More than one-fifth of all who have gone to Jacksonville and a sixth part of all those at Elgin have eloped successfully, while their constant efforts and unsuccessful attempts are a source of expense, anxiety and indirect injustice to the other patients. Dr. Godding, in his report for 1872 (Taunton Lunatic Hospital), says: "Of the six successful elopements (during the year) four belonged to

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\* All of the larger States have them scattered in two or more of the State Asylums.

the criminal class," and similar accounts come from all institutions that have much to do with this class. The disproportion in the number of escapes is enormous, but no greater than might be expected. Now, an insane criminal is, if anything, less to be trusted with his liberty than a sane one, and should not be less, but more carefully guarded than the other. But superintendents of asylums have a full measure of responsibility without these additional duties, and in any event, all they can do with the means at their command will not keep these outlaws secure. They are compelled to assume their charge without facilities being provided to properly guard them, and when they do escape, the fault rests, not with the superintendents, but with the crude system which has laid upon them a trust without supplying the means to carry it out.

Third.—The inexpediency and extravagance of treating insane convicts and criminals in common with other insane persons. The inexpediency in this matter relates chiefly to the tendency among convicts (and other criminals as well) to regard the asylum as an easy escape from their proper punishment, and a convenient "short cut" to freedom. The wardens of all penitentiaries know this. They encounter much perplexity from time to time in dealing with convicts who are either feigning insanity to get to the asylum or are really insane; and a convict about whom there remains a shadow of doubt is never given the benefit of that doubt, but held rigidly to duty and put through the severest tests. If this were not so, "epidemics" of feigned insanity would frequently be appearing in the prison. The result in all cases of this kind is watched with the keenest interest by the other prisoners. Hence, injustice is doubtless often done to individuals, and some who ought to go to the asylum do not get there. This difficulty would be obviated by having an institution connected with the penitentiary for insane criminals. Wardens of penitentiaries, as a rule, favor this plan. I know this to be the case with Maj. McClaughry, the experienced and able manager of the Illinois Penitentiary. In Maine, the same view was taken by the warden and acted upon there. The same plan has been adopted in Massachusetts. At Auburn, the State Criminal Asylum is upon the grounds of

the State Prison, and an interesting fact was developed in connection with this institution, bearing on this point: "From 1846 to 1860, 67 insane convicts were sent from the State prisons to the Utica Asylum, and 69 to the Asylum for Insane Convicts. Of the former 14 feigned insanity, while of the latter only two were suspected of feigning it, showing, as the superintendent states, 'that the hope of escape from a large and general asylum was much greater than from a place designed for the detention and security of criminals.'"\* The consequence of having an asylum connected with the prison would be that prisoners would feel it no object to feign insanity, and there would be no hesitation about sending any convict there who ought to go.

In the matter of expense, the chief point to be adduced is the saving that would be effected by having the insane criminals supported by themselves, in an establishment agreeing in its general scale of expenditure with the penitentiary. The insane convicts and criminals do not, as a general rule, need the elaborate treatment of a hospital for the insane, as a much greater majority of the cases are chronic and incurable, and there is less of that physical debility so largely coexisting with insanity in the community at large. The average expense *per diem* of supporting patients in forty-one American asylums, as ascertained by Dr. Conrad, of Maryland, some four or five years ago, was 69 cents *per capita*. At the Elgin Hospital, in 1876, it reached the moderate figure of 65 cents. For the same period at the Illinois Penitentiary the expense was 40 $\frac{7}{8}$  cents for each convict per diem. At the Auburn State Criminal Asylum, the cost of the asylum for all current expenses for the same period was \$16,322. The year was commenced with 89 patients and ended with 104. Taking 100 as the average for the year, the daily per capita cost was 44 cents. It will be seen by this that the current expenses of such an institution are at least one-third less than those of an average insane hospital. Taking 35 insane convicts as a moderate estimate of the number to be supported by Illinois for the next five years, and allowing a difference of 20 cents

\* Report Board State Charities, Massachusetts, 1871, p. 138.

*per diem* between the present cost of their support at the State insane hospitals and what it would be in a properly administered asylum specially built for them, and we have an annual difference of \$2,548, or in five years of \$12,740. This would go a good way toward the construction of the necessary building, which would be largely put up by convict labor if built near the penitentiary. Another saving secured by such a criminal asylum would be the expenses of transferring convicts. I compute that not less than \$1,400 must have been spent in sending 42 insane convicts from Joliet to Jacksonville, 19 to Elgin, and 11 to Anna, in the past few years. The reply, then, to the question as to the defects in the present provision for insane criminals would be that they are: 1st, an injustice to the insane who are free from crime, in their forced association with felons; 2d, an injustice to the public in not properly guarding these dangerous and vicious criminals; 3d, unnecessary expense and unwise arrangements which result in injustice and suffering to the insane convicts themselves.

V. How are the defects in the present management of insane criminals to be remedied? The foregoing pages have been written to little purpose if it is not evident therefrom that a separate provision is needed for insane criminals, and that they should be cared for in an asylum by itself or addition to another building, specially constructed and adapted for this peculiar purpose, and assimilated in all needful degree, in plan and administration, to the penitentiary; since the intended inmates, although insane, are still dangerous outlaws and criminals, and retain, for the most part, all the criminal characteristics. No argument is needed to show that every state which has a considerable number of this class, would best provide for them in an independent institution; but where it is necessary to enlarge an existing building, the question arises whether the penitentiary or the asylum is the proper institution to receive the addition. It is perhaps naturally assumed on one hand that all insane persons belong at the asylum, but a little reflection or experience will make it plain on the other, that convicts and criminals are, when insane, not less vicious, dangerous and depraved, but often more so, than when sane. In-

sanity is a misfortune for both classes, but does not and cannot obliterate the great gulf fixed between them by their previous career.

Without entering minutely into the pro and con of this question, let us seek a practical solution by noting the opinion and action of those in all stations most capable of passing upon its merits. In the first place, we may be certain that the Superintendents of Asylums in this country, embracing many of our ablest alienists, and almost the only men having practical familiarity with the insane, have given conscientious consideration to this subject. Their "Association," at its meeting in 1873, passed a series of resolutions from which I extract as follows:

"RESOLVED, 1. That neither the cells of the penitentiaries and jails, nor the wards of ordinary hospitals for the insane, are proper places for the custody and treatment of this class of the insane."

"RESOLVED, 2. That when the number of this class in any state is sufficient to justify such a course, these cases should be placed in a hospital specially provided for them, and that until this can be done, they should be treated in a hospital connected with some prison, and not in the wards or separate buildings upon any part of the grounds of an ordinary hospital for the insane."

This is the opinion from the asylum point of view. Let us now inquire what officers of prisons think. I have yet to hear of one who would not prefer to have an insane department in connection with the penitentiary, rather than send insane convicts to asylums. I have already quoted Dr. Pelham, the able medical officer of the California Penitentiary, on this point, and his request for facilities for the care of the insane at the prison. Also, the plea of the Indiana Prison authorities for accommodation at the prison for their insane. Major McClaughry, of the Illinois Penitentiary, informs me that he considers convicts improper persons to go to the asylum, and favors making provision for them in connection with the penitentiary, thus saving trouble, expense and *shamming* among the other inmates. The opinion of the warden of the Maine Penitentiary corresponds with the above.

Judging now by the actual steps taken in the various States, the same conclusion seems to be warranted. In none of the States has a department been added to an asylum for the insane criminals, while all the special provision that exists in New York, in Maine and Massachusetts, is connected with the prison.

I believe that a different opinion has been entertained by the Board of Charities of Pennsylvania, and also at one time by the same board in Massachusetts. F. B. Sanborn, of Boston, the eminent secretary of the American Social Science Association, writes that his conclusion while member and secretary of the State Board of Charities was, "strongly in favor of a separate asylum or department in an asylum, for insane convicts and for persons excused from sentence on the ground of insanity." There are also one or two members of the Association of American Superintendents of Asylums, whose individual opinion is not averse to building a criminal asylum in connection with an insane hospital. Every one of these last, however, is equally stringent about separating the insane criminals totally from the ordinary insane, and it is very difficult to see how this can be done, with both on the same grounds, or inside the same walls. Mr. Sanborn's opinion, however, seems to apply chiefly to the conditions found in Massachusetts, whose State prison has now only 750 inmates, and a small proportion of insane.

There are difficulties to be met on either hand, but the large majority of them seem to stand in the way of sending convicts to ordinary asylums.

The advantages to flow from a separate and distinct establishment in proximity to the penitentiary, are: (1.) The convict insane will receive the only secure and consistent custody possible. In a State which has two or three asylums, with several convicts scattered in each, these can all be brought together, suitably classified and treated equally well at a great saving in expense. (2.) A large number of insane criminals, such as are now sent to asylums after acquittal of crime, but who are dangerous or peculiarly vicious in character, can, in the discretion of courts, or, as in some States, by order of the Board of Charities, be sent to the criminal asylum, thus re-

lieving the other institutions of a pest and scourge, and effecting a further saving in their support. There are now in Illinois, not less than three or four of these at each of the three hospitals, and their number increases with every year since the law thus committing them went into effect; \$728 a year could be saved on ten of this class at once, which, added to the annual saving on 35 convicts, would be \$3,276 per annum. Another very great saving in expense, if the asylum were built near the penitentiary, would be the employment of convict labor to erect it. (3.) There are certain of the prison inmates whose cases can, by the proposed plan, be tested and properly disposed of, who are now in danger of having great injustice done them. They are, (a) convicts who are feigning insanity, (b) convicts not absolutely insane, who are yet inferior in mental organization to such an extent as to justly require some modification of the prison discipline. The number of these (the "half sharp,") is large in every prison, but there is no provision for them. Every convict that will go on about his work regularly is allowed to do so, and many are insane for years and no attention paid to the fact until they suddenly break down, or commit suicide, or some act of atrocity. Many of these might be saved and restored, if any proper facilities were at hand in time. (c) Epileptics and persons suffering from paroxysmal mania, only needing treatment occasionally for a short time, could be cared for in an asylum connected with the prison, although it might never do to send them away to the general asylum. (d) There are many depraved criminals who are sentenced to the penitentiary who would be remanded by the court to a criminal asylum, if such a place existed; their mental defectiveness is developed more or less plainly during the trial, but the judge feels that they are utterly unfit either to go at large, or to go to the general asylum, and the prison is the only resort. This explains, in part, doubtless, why so many convicts, insane from the first, are found in the prison.\*

The subject treated in the foregoing pages is one which has

\* Eleven received already insane at the Philadelphia prison the past year, and nine out of fifteen insane since 1872 at the Maryland Penitentiary.

long failed of coming before the public with the force its importance would justify.

I have treated it with special reference to Illinois, as enlarged provision is now being made in that State for its criminals, an important subdivision of whom are the insane criminals.

I would sum up as follows:

I. Every community has among its insane, a class of "insane criminals," as distinguished from innocent and reputable insane persons, who have committed crimes (the latter generally styled the "criminal insane.") They are in large part convicts, but there are many unconvicted criminals among them.

II. The number of the former class is large; the proportion among convicts being probably not less than one in fifty or sixty.

III. There is no proper or suitable provision for this class.

IV. This lack of provision leads to great injustice and injury to the other classes of insane, and to the community at large.

V. The establishment of a special asylum for these, wherever practicable, would be a measure of justice, humanity and economy, and the preferable location for the same, when it cannot be an entirely independent institution, is in connection with the State prison.



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