THE extent to which rehabilitative procedures and preventive methods other than mere punishment are in fact made use of cannot be made the subject of generalization. In the first place, no general information has been collected concerning the extent of such procedures; and, as was explained at the beginning of this discussion, this study was not directed toward the collection of heretofore unknown data but only toward the assembling and organization of existing but heretofore uncorrelated information. In the second place, the few data which have been gathered indicate so wide a variation in what is actually done under essentially similar legislative enactments as to preclude any generalization of practices. The fact that some particular rehabilitative procedure would be permissible under a fair interpretation of an existing statute does not by any means indicate that such a procedure is actually utilized. On the contrary, though the law may permit, or even explicitly authorize, a desirable activity, the facilities for that activity may be wholly lacking.

I. THE USE OF REHABILITATIVE TRAINING

The very great differentiation between what could legitimately be done under existing statutes and what in fact is done may be fairly exemplified by conditions in the West Virginia penitentiary at Moundsville, as shown by a recent report. The West Virginia statute provided broadly that:

"The state board of control . . . may hire any or all convicts confined in the penitentiary at Moundsville to the state road commission, the county court of any county, or to
contractors engaged in the construction of roads.

"Convicts of both sexes not so employed may be employed by the warden in the manufacture and repair of articles used by the State in conducting the penitentiary, or articles used by any other state institution, or such other articles as the board of control may designate.

"In order to provide employment for convicts not employed as provided in the two preceding sections, the state board of control may let and hire the labor of such convicts, on the piece price system or otherwise, in such branches of business, and for the manufacture of such articles, as in its judgment will best accomplish the ends and subserve the interests of the State."

In a general way this statute might well be considered broad enough to authorize employment of convicts in rehabilitative work. But the actualities are set forth in the Official Report of the Warden for the years 1936–1939, which says:

"Inestimable improvements have been made to the physical properties of this institution, the intrinsic worth of which may well be doubled, since the figures presented represent materials and equipment costs only. Everything possible, commensurate with the money appropriated, has been done for the custody of and care of prisoners. While all these improvements add to safety and security of the prisoners, it is highly significant that not one additional job was created for the vast number of idle population.

"It is a most unhealthy, and hazardous condition, to face an astounding total of 1,200 prisoners loafing and lying about in idleness. Whether it be lack of foresight or hope of forestalling the federal Hawes-Cooper Act, it was inevitable that this serious problem sooner or later had to be confronted. Nevertheless, with the enforced withdrawal of contractual prison industries, the penitentiary was found woefully lacking when it came to absorbing or creating work for those thrown out of employment.

"There are but two practical avenues now to which we may direct our re-employment problem. One is for the State Road

82 West Virginia Code (1931) ch. 28, art. 5, secs. 9, 11.
Commission to engage and keep maintained a force of 800 convicts in public road construction, and the other, is the establishment of industries within the prison for manufacturing of state use goods."\textsuperscript{83}

On this last point it may be noted that the pre-existing law specifically authorized the warden to employ convicts in the manufacture and repair of "articles used by the state in conducting the penitentiary, or articles used by any other state institution, or such other articles as the board of control may designate."

The law itself was sufficient, but the facilities were not. Since that report, the legislature has enacted further legislation to the effect that:

"Whereas, the means now provided for the employment of convict labor are inadequate to furnish a sufficient number of convicts with employment, it is hereby declared to be the intent of this act:

"(a) To further provide more adequate, regular and suitable employment . . . consistent with proper penal purposes;

"(b) To further utilize the labor of convicts for self-maintenance and for reimbursing this state . . . ;

"(c) To effect the requisitioning and disbursement of prison products . . . with no possibility of private profits therefrom."

The board of control is authorized to purchase "equipment, raw materials and supplies and to engage the supervisory personnel necessary" for the production of articles needed in other state institutions. Other institutions are by the same statute required to buy from the penitentiary whatever of their needs it is prepared to supply.\textsuperscript{84}

No report has been received since the enactment of that express authority to provide facilities for the employment of the convicts. It is worthy of note, however, that the reasons


\textsuperscript{84} West Virginia Acts (1939) ch. 104, sec. 1 ff.
for the statute as stated in the preamble do not even suggest that the work should be *rehabilitative* in character, or designed to fit the prisoners for lawful self-support after their release.

2. **THE USE OF EDUCATIONAL REHABILITATION**

The high degree of variance in what is actually done or not done within the permission of essentially similar statutes, and the consequent impossibility of estimating from the existence of any given statute the extent to which non-punitive procedures are in fact utilized, is illustrated by the general educational measures used in the Wisconsin prison as compared with those of North Carolina. The statutes of the two states are not widely different, though the North Carolina legislation is the more broadly directive. The Wisconsin law merely authorizes the chaplain of the prison to hold divine service, to instruct the prisoners in their moral and religious duties, to act as librarian, and “to devote not less than three hours per day, once in each week,” to instructing prisoners who need it. He is authorized to employ qualified prisoners to help him. 85 The North Carolina statute expressly authorizes the organization of classes among the prisoners so that those who desire education in various lines of education may receive it. 86 Yet the Attorney General’s Survey of Release Procedures 87 notes the North Carolina prison at Raleigh as having “no educational program in 1936-7,” while the educational program at Waupun, Wisconsin, was even then outstanding, with courses in more than 75 subjects, ranging from aeronautics, bee culture, foundry-work, fur farming, through plumbing and poultry raising to upholstering and woodworking.

85 Wisconsin Stats. (1941) sec. 53.06.
Prevention of further criminality through the use of probation instead of imprisonment has come into widespread utilization. But here again the existence of the power as given by statute is no indication whatever of the extent of its use. The tremendous disparity in sentences given by different judges for essentially similar offenses is well known.\(^{88}\) What is perhaps not so generally realized is that: "Equally significant are the variations in the extent to which probation is used in various districts. During the fiscal year ending June 30, 1939, in one (federal) district 62.4 per cent of all convicted defendants were placed on probation, while in another the percentage was only 4 per cent. The corresponding percentages in the remaining federal judicial districts lay between these two extremes."\(^{89}\) Again, one finds Judge X imposing fines on 84 per cent and suspending sentence in 7 per cent of his cases, while his colleague Judge Y imposes fines on but 34 per cent and suspends in 59 per cent.\(^{90}\)

So also the extent of release from confinement on parole and the accepted bases for such release are matters of wide variation. In the words of the Attorney General's Survey of Release Procedures:

\(^{88}\) "Several years ago a statistical study was made of the average sentences imposed by every federal district judge in cases involving violation of the liquor laws. . . . The computation made for the fiscal year ending June 30, 1935, showed that the average sentence of imprisonment imposed in such cases by one judge was 851 days, while the average imposed by another judge in such cases was forty days." McGuire and Holtzoff, "The Problem of Sentence in the Criminal Law," 4 Fed. Probation 20, 22 (1940).

"If 100 prisoners are sentenced by Judge F, each has thirty-four chances in 100 of going to jail, since Judge F gives 34 per cent of all his sentences to penal institutions. If, however, they were to be sentenced by Judge B, each would have fifty-seven chances out of 100 of going to jail. In other words, it might be figuratively said that of the 100 men who were sentenced by Judge B, thirty-four would go to jail because of their crimes and twenty-three would go because of the personality of the judge." Frederick J. Gaudet, "Individual Differences in the Sentencing Tendencies of Judges," Archives of Philosophy, No. 230, p. 19 (1938).

\(^{89}\) "The Problem of Sentence," op. cit. supra note 88, at 22.

"The data of the Survey show marked differences in the extent to which parole is used in the various jurisdictions. This is not surprising when notice is taken of the varying factors which influence the use of parole . . . differences in parole organizations, regional differentiations, variances in indeterminate sentence and parole eligibility statutes, wide differences in criminality rates between and within communities, and greatly overcrowded prisons in some sections of the country. . . . Likewise, it is to be noted that within a given State the use of parole varies as between different types of institutions." 91

Its use varies also from year to year. The tables of use, presented by the Survey with the foregoing caveat as to interpretation, show a variation from 94 per cent of prisoners released on parole in Indiana, New Hampshire and Vermont and 93 per cent in New York to 5 per cent in Maryland, 1 per cent in South Carolina, and no releases in Idaho, Virginia, and Mississippi.92

In further illustration of the impossibility of guessing what is actually being done from what the statutes theoretically permit, is the educational program in the Wisconsin penitentiary as set out in the Survey. But here, happily, the illustration is of actualities in excess of what one might expect from the statutes. The legislation itself merely authorizes the chaplain of the prison to hold divine service, to instruct the prisoners in their moral and religious duties, to act as librarian and to "devote not less than three hours per day, once in each week, and oftener, if the board of control shall consider it necessary, to instructing those prisoners who need such instruction in the common branches of English education; and with the consent of the warden call to his assistance in such educational labors such convicts as he may deem qualified." 93

92 The lack in actual practice of assistance to persons who have been released on parole is indicated by the data in Appendix N, p. 205.
93 Wisconsin Stats. (1941) sec. 53.06.
This is far less broad and less explicit an authorization than is found in the statutes of several other states. Yet the Attorney General’s Survey of Release Procedures says of the Wisconsin state prison:

“By an arrangement with the Wisconsin Free Library Commission, a series of reading courses were arranged on special topics for particular individuals. . . . It is reported in 1934, that ‘nearly 500 men are always taking these courses in 75 to 100 different subjects.’ . . . The list of reading courses includes the following: (giving 32 topics; from Accountancy and Aeronautics, through Landscape Gardening and Shorthand, to Upholstering and Woodworking). . . . In 1933, the contract shops were removed from the prison and the space formerly occupied by them given over to a full time educational director and a corps of inmate teachers for a school. With these arrangements, a regular day school in academic subjects and a cell-study program were also inaugurated.” 94

By way of contrast is the North Carolina statute 95 which specifically authorizes classes among the prisoners so that those who desire may receive instruction in various lines of education. Here the authority is as ample as it is in Wisconsin, but the utilization of that authority is quite different. The only comment of the Attorney General’s Survey of Release Procedures is that “fourteen prisons had no education program in 1936–37. These include the following: . . . North Carolina (Raleigh). . . .” 96

96 United States Department of Justice, op. cit. supra note 94, at 233.

One finds further illustration, if any were needed, of the fact that the actual employment of a desirable practice cannot safely be deduced from the existence of a statute authorizing or directing such a practice, in the Recommendations to the Legislature, New York Legislative Document (1942) No. 52, Ninety-seventh Annual Report of the Prison Association of New York, p. 21. Of Elmira Reformatory it says:—“The intent and expressed purpose of this institution was the housing of the youthful first offender. The intervening time, however, has witnessed a wide and marked departure from the original thought, and re-
3. ASSISTANCE AFTER RELEASE

As was pointed out in the preceding chapter, existing legislation makes practically no provision for assistance after release from prison in the difficult problem of self-support without return to criminality. Neither, it can safely be said, is anything effectively done in actuality by state agencies along these lines. Private agencies are helpful, but limited in their scope and facilities. In most states the parole authorities do find honest employment for the convicts they release on parole, but do not for those who are released because the term of imprisonment has expired. For neither are the state agencies legally obligated to help in finding continued employment, and the replies of parole authorities to interrogation indicate that practically nothing is done in fact by way of assistance after release from prison.97

4. THE GENERAL NEGLECT OF PREVENTIVE PROCEDURES

From various sources of information one is impressed by the fact that here and there, to some limited extent, a real effort is being made to put into operation as effectively as possible all the crime preventive procedures which the existing law permits.

Nevertheless, one finds to the contrary such assertions as that of Viola Ilma, executive director of the Young Men’s Vocational Foundation:

“The majority of youths released from reformatories . . . have no jobs or prospects of jobs, and many of them have no homes. . . . These youthful offenders are especially worth helping in their efforts at self-rehabilitation. Recent studies, made at the institution, indicate that only approximately one-fourth of the inmates are first offenders, and over half are of low intelligence. . . . The entire plan and program of the institution is retarded by virtue of the character of the prisoners sentenced.”

97 The gist of these replies will be found in Appendix N, p. 205.
True, many correctional institutions have vocational training programs and maintain workshops, however inadequate. But too often the vocational training programs correspond to the work needs of the institutions, and are not realistically adjusted to industrial needs and job trends on the outside."  

Perhaps the most severe arraignment of existing practices, as distinct from existing possibilities, is the simple, forthright, statistical assertion by the American Bar Association committee on sentencing, probation, prisoners and parole, which reads as follows:

"A statement that 100,000 penitentiary prisoners out of 162,000 were not being subjected to any conscious, organized rehabilitative efforts of any kind was not challenged by the American Prison Congress before whom it was made.

"Volume V of the Attorney General’s Survey of Release Procedures, which deals with penal and correctional institutions, finds that of 136,957 male prisoners in the institutions studied 30,000 were in camps which offered no rehabilitative facilities, 40,000 were housed in quarters so over-crowded as to endanger health and morals, 55,000 were confined in idleness, and only 35,000 had the benefit of any organized educational activities.

"The reliable and comprehensive reports of the Osborne Association, in its successive Handbooks of American Prisons and Reformatories and its News Bulletin, shows that only here and there throughout the country has modern thought been put to practice.”  

Contrary to what was said at the beginning of this section, perhaps one can safely generalize concerning the actual utilization of methods better designed than punishment for the prevention of repetitious criminality. One may accept the generalization of that same committee: "For the most part our

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89 Report presented to the Section of Criminal Law, annual meeting, Sept. 1940, p. 20.
prisons and reformatories are operated much as they were before the new concepts and techniques were known.”

100 As an isolated comment, the “Recommendations to the Legislature,” New York Legislative Document (1941) No. 61, Ninety-sixth Annual Report of the Prison Association of New York, p. 15, is illuminating—“III. It is recommended that the psychiatric, psychological and allied professional services eliminated in 1939 continue to be restored to the State Department of Correction.” Present writer’s italics.