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INDIANA CRIMINAL AND PENAL LEGISLATION RESPECTING WOMEN

(Concluded)

By DANIEL JAMES*

IV

PROSTITUTION

Attempts at legal control of prostitution, either through regulation or absolute suppression, have never met with any degree of success.⁹¹ In 1911 an editorial in the *Journal of Criminal Law and Criminology* made the following statement:

"In no department has society been less successful than in the control of sexual immorality. Nowhere else is there a greater contrast between the ideals of the group and the actual facts. In Europe, by supervision, the state has attempted to prevent the spread of venereal diseases, but limiting its supervision to women prostitutes, has signally failed. In America prostitution has been by law strictly forbidden, in actual practice tolerated. This has rendered possible the worst sort of alliance between those seeking to defy laws and those charged with the duty of enforcing them."⁹²

The problem of prostitution cannot be dealt with only locally; white slavery has its world-wide significance. In 1904 a treaty was made between most civilized nations in an attempt to suppress it internationally, but met with only partial success.⁹³ In 1907 the United States passed the Immigration Act⁹⁴ preventing the importation of women for purposes of prostitution, and in 1910 the Mann Act⁹⁵ to prevent interstate and foreign commerce in the white slave traffic. The exact extent of prostitution in the United States is hard to determine, but it is at least extensive

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⁹¹ Cairns, *loc. cit.*, *supra*, note 32 at 215.

⁹² (1911) 1 J. of Crim. L. and Criminol. 985. See also note on regulation of prostitution and its difficulties in Germany and Austria, (1912) 3 J. of Crim. L. and Criminol. 107. For statutes attempting to regulate prostitution and subject it to medical control, see 29 & 30 Vict. c. 35 (1866); 32 & 33 Vict. c. 96 (1869). A survey of prostitution in the world's history, from a medical viewpoint, is given in Haggard, *Devils, Drugs, and Doctors*, (1929) 259-277.

⁹³ (1910) 1 J. of Crim. L. and Criminol. 152.

⁹⁴ Act of Feb. 20, 1907, 34 Stat. 898.

⁹⁵ Act of June 25, 1910, 36 Stat. 825.

enough to constitute one of the most important of our social ills.⁹⁶

The evils of the traffic are many, the first and most obvious of which is that the prostitute is one of the most prolific sources of venereal disease. In its failure to cope with that problem society is perhaps particularly blameworthy, for it is a problem which is possible of solution, and has suffered from being entangled in the emotionalism attendant upon the usual reaction to the moral aspects of vice. Venereal diseases would be more quickly eliminated by being treated as a problem in social hygiene and public health, not one in morals.⁹⁷ Only a few states require medical examination of convicted prostitutes,⁹⁸ and as late as 1924 Indianapolis was the only Indiana city that performed this necessary public health function.⁹⁹ This is significant when we consider that "syphilis stands first or second among the most frequently reported infections to the Public Health Service from the several state health departments," and that "gonorrhoea stands about fifth."¹⁰⁰ But there are other evils. General moral turpitude is a natural concomitant of commercialized prostitution in a community, and the necessity of protecting the younger members of society becomes exceptionally pressing. Furthermore, prostitutes as a class are inclined toward criminal tendencies other than prostitution.¹⁰¹ Obviously

⁹⁶ In 1923, of "82 cities providing data on the prevalence of prostitution, 21 per cent report 'prostitution extensive.' Sixty-two per cent report in such terms as 'less than average,' 'moderate or fairly extensive,' 'decreasing,' or 'clandestine,' while 2 per cent report 'none.' The remaining 15 per cent report that it is 'impossible to estimate the extent.'" Snow, Bristol and Edwards, *Venereal Disease Control*, (1927) 13 J. of Soc. Hygiene, 193, 198. Indianapolis reported "less than average," and Evansville and South Bend reported "decreasing," whatever those terms mean. *Ibid.*, 221.

⁹⁷ See Lecky, *History of European Morals*, (1869) vol. ii, 301; Snow, Bristol and Edwards, *op. cit.*, *supra*, note 96; Nicoll, *Venereal Disease as a Public Health Problem*, (1929) 15 J. of Soc. Hygiene, 456; Haggard, *loc. cit.*, *supra*, note 92.

⁹⁸ *E. g.*, Gen. Stat., Conn., 1930 Rev., Sec. 6226; Page's Ann. Ohio G. C., 1926, § 13031-17.

⁹⁹ Snow, Bristol and Edwards, *op. cit.*, *supra*, note 96, at 224.

¹⁰⁰ Parran and Usilton, *The Extent of the Problem of Gonorrhoea and Syphilis in the United States*, (1930) 16 J. of Soc. Hygiene, 31, 42. See also: Owings, *Prevention Versus Salvage*, (1927) 13 *Idem* 406; Parran, *Statistical and Public Health Research in Syphilis*, (1928) 14 *Idem* 513.

¹⁰¹ A survey in New York has demonstrated that most women felons are prostitutes or otherwise sexually immoral women. Davis, *A Plan of Rational Treatment for Women Offenders*, (1913) 4 J. of Crim. L. and Criminol. 402.

the criminal law alone cannot cope with all of these problems; nor should it try to. Other social agencies can do more—such agencies as the “Big Sisters” movement,¹⁰² comprehensive education in sex hygiene for adults¹⁰³ and young people,¹⁰⁴ and juvenile courts with efficient probation officers.¹⁰⁵

The first attempts of the Indiana General Assembly to deal with the situation began in 1840, when, in the charter of the city of Richmond,¹⁰⁶ the council was given power to suppress houses of ill fame. This provision appeared in most of the special charters granted to towns thereafter,¹⁰⁷ and the general city and town incorporation laws after 1852 give the council power to “suppress houses of ill fame or assignation, or houses kept for any immoral purpose . . . and to restrain and punish . . . common prostitutes.”¹⁰⁸

The first general statute, as opposed to a local law, on the subject in Indiana was passed in 1852, in an effort to protect women from being led into the life of a prostitute. It provided that anyone who enticed or took away a female of previous chaste character, for purposes of prostitution, or anyone who advised or assisted in such abduction, should be subject to a

¹⁰² (1913) 4 J. of Crim. L. and Criminol. 127. In 1923 Indianapolis, Evansville and South Bend, of Indiana cities, reported institutional work outside of jail for sex offenders. Snow, Bristol and Edwards, *op. cit.*, *supra*, note 96, at 225.

¹⁰³ See the English plan of education and free medical treatment: Newsholme, *The Decline in the Registered Mortality from Syphilis in England*, (1926) 12 J. of Soc. Hygiene 513.

¹⁰⁴ (1913) 4 J. of Crim. L. and Criminol. 129 and 150; (1922) 13 J. of Crim. L. and Criminol. 145; Proceedings of Nat. Conf. of Charities and Correction, (1912) 288.

¹⁰⁵ Indiana's first juvenile courts were created by Acts 1893, Ch. 237. It has also been recommended that an act be passed for the enumeration and special training of defective and retarded children. Rep. Ind. Com. on Observance and Enforcement of Law, (1913) 21-22, 30, 54.

¹⁰⁶ Local Laws 1840, Ch. 6, Sec. 41 (5).

¹⁰⁷ See the following Local Laws: 1845, Ch. 2, Sec. 30 (8); 1847, Ch. 1, Sec. 30 (6); 1847, Ch. 42, Sec. 35 (4); 1847, Ch. 77, Sec. 49 (4); 1848, Ch. 56, Sec. 8 (11); 1849, Ch. 143, Sec. 8 (6); 1851, Ch. 55, Sec. 22 (7) and (9); 1851, Ch. 92, Sec. 14 (5); and Acts 1873, Ch. 11, Sec. 7; Acts 1879 (Spec. Ses.), Ch. 103.

¹⁰⁸ See the following: Acts 1857, Ch. 33, Sec. 35; 1866, Ch. 1, Sec. 34 (9); 1867, Ch. 15, Sec. 53 (9); 1873, Ch. 16, Sec. 1 (9); 1879 (Spec. Ses.), Ch. 98; 1891, Ch. 97; 1893, Ch. 59; 1893, Ch. 115; 1899, Ch. 152; 1901, Ch. 118; 1903, Ch. 174; 1903, Ch. 230; 1905, Ch. 129; 1909, Ch. 152.

penalty of imprisonment from two to five years, or confinement in the county jail for any term up to one year and a fine of not more than five hundred dollars.¹⁰⁹ This was reenacted in 1881,¹¹⁰ and it was further provided that prosecutions could be brought in any county where the offense was committed, or into which or out of which the woman was taken.¹¹¹ In 1907 it was made a felony for any man over seventeen to "cause, encourage or entice, any female person, other than his wife, under the age of eighteen, to enter or accompany such person to any house of prostitution, assignation, saloon or wine room where intoxicating liquors are sold, or any other place for vicious or immoral purposes." The penalty is two to fourteen years, and the fact of entering such a place with a woman is made to constitute *prima facie* evidence of criminal intent.¹¹² Four years later it was enacted that anyone who should induce or encourage any female to become an inmate of a house of prostitution, or who should procure or aid in procuring a place in such a house for her, should be subject to a penalty, for a first offense, of imprisonment from two to ten years and a fine of from three hundred to one thousand dollars, and for subsequent offenses imprisonment from two to fourteen years.¹¹³

A statute directed against the offending woman herself appears for the first time in 1881.¹¹⁴ It provides that any female who frequents or lives in a house of ill fame, or associates with women of bad character for chastity, either in public or in a house which men of bad character frequent, or who commits fornication for hire, shall be deemed a common prostitute, and shall be subject to a fine of from five to fifty dollars, to which may be added imprisonment in the county jail from ten to thirty days. This was reenacted in 1905.¹¹⁵ Eight years after the

¹⁰⁹ Rev. Stat. 1852, p. 401.

¹¹⁰ Acts 1881 (Spec. Ses.), Ch. 37, Sec. 88; this appears again in Acts 1905, Ch. 169, Sec. 459. Most states have statutes similar to this. Bell, *Fighting the Traffic in Young Girls*, (1910) 1 J. of Crim. L. and Criminol. 339.

¹¹¹ Acts 1881 (Spec. Ses.), Ch. 36, Sec. 234.

¹¹² Acts 1907, Ch. 75.

¹¹³ Acts 1911, Ch. 174. Some jurisdictions have similar statutes specially directed against any man who causes his wife to become a prostitute. *E. g.*, Act of June 25, 1910, 36 Stat. 833 (Dist. of Col.); Pa. Stat., 1920, Sec. 7994. Massachusetts has a statute penalizing employment offices for sending girls to places which, upon reasonable inquiry, could have been found to be houses of prostitution. G. L., 1921, Ch. 272, Sec. 12.

¹¹⁴ Acts 1881 (Spec. Ses.), Ch. 37, Sec. 98.

¹¹⁵ Acts 1905, Ch. 169, Sec. 471.

legislature struck at the prostitute herself it struck also at her patron. An act was passed making it a misdemeanor for any male person to frequent or visit a house of ill fame, or associate with women reputed to be prostitutes. The penalty provided was a fine of ten to one hundred dollars, to which might be added imprisonment in the county jail for ten to sixty days¹¹⁶—double the penalty against the woman. A cognate legislative devise, common in other jurisdictions, is the so-called "true name statute," making it criminal to register at a hotel under a false name.¹¹⁷

The persons chiefly responsible for commercialization of the traffic, the keepers of the resorts, were also first dealt with by the legislature in 1881, when the keeping of a house of ill fame was penalized by a fine of from ten to one hundred dollars, to which might be added a county jail sentence up to six months.¹¹⁸ The same act also penalized the keeper of a house of assignation by a fine of from ten to five hundred dollars, to which might be added a jail sentence of one to six months.¹¹⁹ Each of these sections was reenacted in 1905.¹²⁰

These prohibitory measures, with only criminal penalties, were the only devices used against keepers of houses of prostitution by any legislature in the United States until well into the present century. The ineffectiveness of the devices was notorious.¹²¹ In 1911 the first effective fighting of commercialized prostitution had its inception when an injunction was obtained against the maintenance of certain resorts in Chicago.¹²² The machinery for securing injunctions was at that time cumber-

¹¹⁶ Acts 1889, Ch. 179; reenacted, Acts 1905, Ch. 169, Sec. 470.

¹¹⁷ *E. g.*, Mass. G. L., 1921, Ch. 140, Sec. 29; Page's Ann. Ohio G. C., 1926, Sec. 843-1a.

¹¹⁸ Acts 1881 (Spec. Ses.), Ch. 37, Sec. 89.

¹¹⁹ *Ibid*, Sec. 96.

¹²⁰ Acts 1905, Ch. 169, §§ 460, 469. It may be pointed out that section 469 is so worded that the keeper of a hotel who permits married couples to put up at his establishment may be brought within the definition of a keeper of a house of assignation. Although there is probably no real danger of prosecution against such innocent persons, more artistic draftsmanship would be desirable.

¹²¹ In New York out of over one thousand complaints against houses of prostitution, in which girls were arrested, more than sixty-five per cent of the cases against the owners were so disposed of that they could immediately return to business. (1911) 1 J. of Crim. L. and Criminol. 834, 836. See, also, McMurdy, *loc. cit.*, *supra*, note 21; and (1913) 4 J. of Crim. L. and Criminol. 304.

¹²² McMurdy, *loc. cit.*, *supra*, note 21.

some, requiring very specific evidence, but the idea of using the injunction struck fire, and the Vigilance Association drafted a model act which appeared in 1913.¹²³ It allowed, as evidence in the trial, proof of the general reputation of the place to be closed. This bill, substantially, was made a part of the Indiana law in 1915.¹²⁴ It declares all such places to be nuisances, and provides that an injunction, binding throughout the state, shall be issued against anyone who owns, occupies, leases or operates a house of ill fame or assignation, providing a penalty for violation of the injunction of two hundred to one thousand dollars in a fine, or three to six months in jail, or both. It also provides for closing of the building until the owner gives bond, in a sum to be fixed by the court, that the premises will not thereafter be used for immoral purposes. In addition, if a permanent injunction is issued, a fine of from fifty to three hundred dollars shall be levied upon the offending party. This seems to be the most effective weapon yet devised by any legislative body for fighting commercialized vice.¹²⁵ That it is not nearly as effective, however, in actual operation as might be desired is patent. Although no sweeping generalization can be made upon a survey in a single city, the following, from the state that seems to have mothered the law, is indicative: In an Illinois town of 60,000, thirty-eight brothels with ninety-six inmates were found by two social workers in two evenings of searching.¹²⁶

V

WOMEN'S PRISONS AND REFORMATORIES

The first indication the legislature of Indiana gave us of being concerned about women behind the bars was in 1818, when it provided that jails must have separate rooms for the sexes.¹²⁷ Likewise in 1829 it was provided that females sentenced to hard

¹²³ (1913) 3 J. of Crim. L. and Criminol. 926.

¹²⁴ Acts 1915, Ch. 122.

¹²⁵ McMurdy, *loc. cit.*, *supra*, note 21.

¹²⁶ Lewis, *Survey of a Vice District in the Middle West*, (1927) 13 J. of Soc. Hygiene 93.

¹²⁷ Acts 1818, Ch. 32, § 8. Thus, in the old log jail on display in Brown County we are told that the lower quarters were for men, the dark little cubbyhole upstairs for women. In a few jails this requirement has not been adequately complied with even yet. Rep. Ind. Com. on Observance and Law Enforcement, (1931) 24.

labor in prisons should be kept separate and apart from males.¹²⁸ In 1847 the town of Jeffersonville, in its charter, was given power "to erect a house of refuge for juvenile offenders and females."¹²⁹ The woman problem next presents itself in legislation in 1852, when the state prison evidently found itself without adequate facilities to care for women inmates. It was enacted that:

"Upon conviction of any female of any crime or offense . . . the punishment for which is confinement in the State's prison, she may, instead of such punishment, be imprisoned at hard labor in the jail of the county, under the direction of the jailor."¹³⁰

But this was apparently only temporary relief, for in 1861 the directors of the state prison were authorized to enlarge the female department at a cost not to exceed fifteen hundred dollars,¹³¹ and six years later the legislature had to enact that whenever a city or private corporators had established or should establish a home for "the protection and reformation of abandoned or erring women," and was in a position to restrain the liberty of anyone committed to its charge, convicted women might, in the discretion of the court, be confined in such home, "with a view to reformation as well as punishment." The trustees of the home were to be governed by the laws of the state, making such imprisonment at hard labor, solitary confinement, or otherwise. And furthermore, "inasmuch as a great need exists for better provisions being made for the keeping of females convicted of offenses," an emergency was declared so that the act might go into effect at once.¹³²

What the nature of the hard labor was to which women prisoners were subjected in the early days is not mentioned. There are a number of statutes specifying work for men, such as labor on the roads and other public works, and manufacturing enterprises within prison walls, but women are usually expressly exempted.¹³³

The great need, which the legislature expressed in 1867 for better provisions for keeping women offenders, two years later

¹²⁸ Acts 1829, Ch. 29, § 4.

¹²⁹ Local Laws, 1847, Ch. 77, § 49 (31).

¹³⁰ Rev. Stat., 1852, p. 423.

¹³¹ Acts 1861, Ch. 90, § 4.

¹³² Acts 1867, Ch. 123.

¹³³ Acts 1881 (Spec. Ses.), Ch. 36, § 288; 1883, Ch. 108; 1885, Ch. 80; 1901, Ch. 42, Ch. 118; 1905, Ch. 129, § 32, Ch. 169, § 304.

brought into being a statute¹³⁴ for the establishment of the first women's prison in America—the Indiana Reformatory Institution for Women and Girls.¹³⁵ The act provided for both a reformatory and a penal department, to be in separate buildings. The penal department was to be for inmates over fifteen years of age who were convicted of crimes for which the sentence had previously been imprisonment in the state prison at Jeffersonville. The reformatory department was for girls under fifteen who were guilty of incorrigible or vicious conduct or who had such unsuitable homes that they were in danger of being brought up to lead idle and immoral lives. The superintendent and all officers were to be women,¹³⁶ whose duties were that they should “as far as possible reform the characters, preserve the health, promote regular improvement in the studies and industrial employment of the inmates of the institution, and secure to them fixed habits of industry and religion.” The studies definitely prescribed were the three “R’s.” This institution was opened for admission of inmates in 1873.¹³⁷ Two years later the legislature provided that girls under the age of sixteen who were convicted of crimes for which they might be sentenced to the county jail, could be confined instead, in the discretion of the court, in the reformatory department of the state institution until they attained the age of eighteen or were sooner discharged.¹³⁸

¹³⁴ Acts 1869 (Spec. Ses.), Ch. 32. The impetus for this act was also in great part an investigation by the Society of Friends, which revealed deplorable treatment and care of women offenders in the prison at Jeffersonville. Rep. Ind. Com. on Observance and Enforcement of Law, (1913) 13.

¹³⁵ Other states have established women's penal institutions in the following order: 1874, Massachusetts; 1881, New York; 1900, Iowa; 1910, New Jersey; 1911, Ohio; 1913, Pennsylvania and Wisconsin; 1915, Minnesota and Maine; 1917, Kansas, Michigan and Connecticut; 1919, Washington (discontinued), Arkansas, Nebraska and California; 1921, Vermont; 1922, Rhode Island. Rogers, *Digest of Laws Establishing Reformatories*, (1922) 13 J. of Crim. L. and Criminol. 382, 385-386.

¹³⁶ Indiana was still, in 1922, the only state which had a board composed totally of women in full charge of its women's prisons. Rogers, *loc. cit.*, *supra*, note 135, at 388. Before the establishment of the women's institution in Indiana there had been prison matrons in some state penitentiaries, starting in New York in 1845. Owings, *Women Police*, (1925) 98.

¹³⁷ Rogers, *loc. cit.*, *supra*, note 135, at 388.

¹³⁸ Acts 1875, Ch. 45.

In an act of 1889,¹³⁹ changing the name of the institution to "The Indiana Reformatory Institution for Women and Girls," the age of commitment of girls was also changed to from eight to fifteen inclusive. Such girls were to be retained until they were twenty-one, except that they might be paroled at eighteen by the board of managers, subject to good behavior.

In the last year of the last century the two departments of the institution were separated into independent units, one of which was to be called "The Indiana Industrial School for Girls," and the other "The Indiana Women's Prison."¹⁴⁰ This separation was made complete by an act of 1903¹⁴¹ which provided that the girls' school should be placed in buildings "separate and widely apart from those now used." Commissioners, to be appointed by the Governor, were to select a plot of eighty acres of land within ten miles of Indianapolis, taking into consideration facilities for "farming, gardening and horticulture, adequate and suitable drainage, water supply, provisions for disposal of sewage, electric and steam railroad facilities, proper disposition of all necessary buildings, and its general adaptability, so as to provide for the erection of a modern school of this class." Buildings were to be fireproof or slow burning, and on the cottage plan. One hundred and fifty thousand dollars was appropriated for the project, and this was raised to two hundred and thirty-five thousand dollars two years later.¹⁴² The whole spirit of the statute was that the school should be a place of reform and correction of delinquent girls, rather than a penal institution primarily for punishment. In 1903 the legislature also provided that the conditions for admission of girls to the school should be the same as those prescribed for admission to the reformatory department of the women's prison under the original act of 1869.¹⁴³ In 1907 the institution was given its present name—"The Indiana Girls' School."¹⁴⁴

The next legislature changed the age of commitment to from ten to eighteen, and stipulated that no girl should be committed for a shorter period than until she attained the age of twenty-one, provided, however, that the trustees might earlier release any inmate into a previously investigated private home, when it

¹³⁹ Acts 1889, Ch. 174.

¹⁴⁰ Acts 1899, Ch. 19.

¹⁴¹ Acts 1903, Ch. 241.

¹⁴² Acts 1905, Ch. 58.

¹⁴³ Acts 1903, Ch. 35.

¹⁴⁴ Acts 1907, Ch. 98; Acts 1907, Ch. 119.

seemed for the best interest of the inmate to do so. It was also provided that girls of unsound mind or with contagious diseases should not be eligible for admission to the school.¹⁴⁵ In 1913 the age for final release was lowered from twenty-one to twenty.¹⁴⁶

In 1911 it was enacted that any inmate over eighteen, who was apparently incorrigible, might, with the consent of the Governor, be transferred to the women's prison temporarily, subject to being recalled by the board of governors.¹⁴⁷

The last important act concerning the girls' school came in 1913, in an attempt to aid in making permanent any tendency toward reform which might be created in inmates of the school. Because one of the strongest forces making for recidivism in criminals and delinquents is the influence of bad associates after release, it was enacted that anyone who aids or encourages an inmate of the school to indulge in vicious or immoral conduct, or to violate her parole, or anyone who harbors an escaped inmate, shall be subject to a penalty of a fine in any sum up to five hundred dollars, or confinement to the workhouse for not more than six months, or both.¹⁴⁸

Meanwhile there had been one important act concerning the women's prison. In 1907 it was split up into two departments, penal and correctional.¹⁴⁹ It was provided that all women, above the age for commitment to the girls' school, who should thereafter be convicted of offenses carrying with them a jail sentence, or any such woman who should be confined in jail for failure to pay fines or costs, should be sent to the correctional department of the prison. There was a proviso that as respects certain shorter sentences the court, in its discretion, might keep the offenders in the local jail.¹⁵⁰

At the present time all of the state institutions are overcrowded. But the women's institutions are apparently in as satisfactory a condition as the men's, with the percentage of overcrowding about the same.¹⁵¹ The per capita expenditure for women is slightly larger than that for men,¹⁵² but the figures

¹⁴⁵ Acts 1909, Ch. 171.

¹⁴⁶ Acts 1913, Ch. 266.

¹⁴⁷ Acts 1911, Ch. 262.

¹⁴⁸ Acts 1913, Ch. 273.

¹⁴⁹ Acts 1907, Ch. 135.

¹⁵⁰ See, also, Acts 1921, Ch. 191.

¹⁵¹ Rep. Ind. Com. on Observation and Enforcement of Law, (1931) 14; see, also, 57th Rep. Ind. Women's Prison, (1929) 4, 8.

¹⁵² Ind. Bull. of Charities and Correction, May, 1929.

have to be interpreted in the light of other elements, such as the size of the institution and productive capacity of the inmates. It may also be noted that the women's prison retains, as do the men's institutions, an agent for the purpose of securing employment for released inmates.¹⁵³

Speaking generally, of the country as a whole, it may be said that women's prisons have been the vanguard of penal progress and reform;¹⁵⁴ and it is noteworthy that Indiana has all the way along assumed an unchallenged leadership in that vanguard.

VI

CONCLUSION

The most apparent conclusion to be drawn from a study of this kind, of the legislative history of any of our social institutions, is general and not confined to this particular subject matter. There is a crying need in our legislative process for some form of record, even though abridged, of debates and proceedings and committee reports.¹⁵⁵

Confining ourselves, however, more particularly to the immediate subject, it may be pointed out first that if the legislature

¹⁵³ *Ibid*, p. 265.

¹⁵⁴ The Wickersham Commission is quoted as follows: "What has been said as to our prisons and reformatories does not apply to the best of the women's reformatories. They have been leaders in a new type of penal administration. This seems to be true from every point of view. In their building program, their health and educational program, their methods of discipline, their internal responsibility, their recreation program and in their follow-up work after release, they have set an example which the other institutions might well try to emulate and from which they might learn much which would be useful even to the most difficult of adult prison groups." *New York Herald-Tribune*, July 27, 1931, p. 10.

¹⁵⁵ Each General Assembly buries in the unrecorded past its experiences, its thoughts, its plans, leaving its successors to begin anew with only such experience as can be called up from imperfect human memory. To be sure, each Assembly leaves its volume of statutes, but a statute seldom states its underlying purpose, almost never its *raison d'etre*. Not only for the Assembly's successors would an adequate record be useful; it is almost indispensable to the courts for purposes of statutory interpretation if they are to be able to reach a true legislative intent instead of merely talking about one. Unless a court can find out what the background of an act is, what forces brought it into being, what purposes it was designed to effect, the court itself is driven to legislating in its interpretative function because the true legislative body, although it has spoken, has expressed but a part of its thoughts.

has appeared to be wandering in a dense fog as respects some of the problems here studied, it must not be censured too severely; it has given but a faint reflection of the confusion in the literature which must give it a basis of knowledge on which to act. The dearth of scientific information is very marked. There are volumes and volumes about women criminals and prisoners, and sex offenders, but by far the great majority of them are popular sentimental narratives or *a priori* treatises. Most of the problems are problems in morals, in which the scientific becomes mixed with the emotional, usually at the expense of the former; most of them admittedly concern horrible and unsightly festerings in our social body; but it is difficult to see why they cannot be investigated in the same dispassionate spirit and written about in the same unemotional language used by a physician concerning a disease which to him also may be loathsome. Some scientific writing there has been, but taking the literature as a whole, we may say that this field of social ills is being treated in about the same scientific spirit in which individual ills were treated in the time of Vesalius. The legislator cannot be expected to rise above the material with which he must work.

Most of the statutory crimes with which we have here dealt have happened to concern sex, and their whole underlying philosophy needs reexamination. "The laws of the colonial Puritans as to sex expression are, according to the statute books, the law of America to-day. Alteration in form of punishment is practically the only change from the early law to the existing law."¹⁵⁶ It will, of course, be a courageous legislator who will begin the revamping of the statutes; another Robert Dale Owen will be required. It is always more easy for a legislator to explain to his constituency why he voted for a statute restraining sexual conduct, even though such statute is not within the natural embrace of law from a jurisprudential standpoint, than to explain to them why he voted against it.

From the viewpoint of Indiana's leadership in the feministic movement, there are some obvious manifestations of that movement in the material here examined. It has been impossible to determine what immediate impelling forces caused the passage of most of the statutes. Many statutes are a direct legislative response to some decided case, but an examination of cases preceding some of the more important of these acts revealed

¹⁵⁶ May, *Social Control of Sex Expression*, (1931) 256.

nothing. Some of them were probably the results of legislative feelings or beliefs or of local happenings or of unappealed *nisi prius* litigation; undoubtedly some of them were copied from the statute books of other states.

A few guesses, however, may be ventured. The women's rights movement has manifested itself strongly in the way Indiana has assumed leadership in women's penal legislation and in another leadership she has as respects women police.¹⁵⁷ Concerning the criminal statutes the guesses are more difficult. There has been much talk of sex equality in the feministic movement, and we have found a legislative tendency to equalize for men and women the operation of the criminal law. But sex equality is a paradox if taken literally; what is meant is a recognition of the true differences between the sexes and a proceeding upon that basis. The fact that distinctions are preserved respecting those crimes which have to do with sex—the very distinction between men and women—may indicate, and probably does, that unequal treatment may be the only true equity. Furthermore, as a last thought, it may be pointed out that, since sex equality is but a secondary purpose of the criminal law, certain inequalities may be necessary to the fulfillment of its primary function, the protection of society.

¹⁵⁷ Indiana empowered cities of the first class to appoint women to their police forces in Acts 1919, Ch. 139. Although Indiana was not the first state to do this, in 1922 her capital city had twenty-two policewomen—more than any other city in the United States. Snow, Bristol and Edwards, *op. cit.*, *supra*, note 96, at 228.