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## AMERICAN PENITENTIARY SYSTEMS AT THE BEGINNING OF THE 19<sup>th</sup> CENTURY THROUGH THE EYES OF EUROPEAN INTELLECTUALS

**Abstract:** The article shows the results of the research of French intellectuals Alexis de Tocqueville and Gustave de Beaumont, conducted in the American penitentiaries of the Pennsylvania and Auburn system at the beginning of the 19<sup>th</sup> century. The following article, through the analysis of the prison report of Tocqueville and Beaumont “On the Penitentiary system in the United States and its application in France...” answers the questions: How the French thinkers evaluated the American penitentiary solutions? Why did these solutions catch the attention of Europeans? What defects and advantages of these systems have been noticed? The work will also present views on the punishment of Tocqueville and Beaumont, along with their sociological, criminological and penological insights. The controversy of the topic will be illustrated by the polemics of Francis Lieber (translator of the report into English) with the authors of the report. The following work uses the source text analysis method, along with the analysis of the available literature on the subject.

**Key words:** Penitentiary system, USA, Pennsylvania model, Auburn model, prison report, penology.

### INTRODUCTION

Alexis de Tocqueville (1805–1859) and Gustave de Beaumont (1802–1866) travelled to the United States in 1831. The main purpose of their stay was to visit new and pioneer penitentiary solutions – the Pennsylvania and Auburn penitentiary systems. The trip to the United States, aimed at investigating penitentiary systems also had other purposes, especially to observe democratic, American society (all Tocqueville’s reflections on this subject can be found in famous work “On democracy in America”<sup>1</sup>). Gustave de Beaumont was Tocqueville’s companion on a trip to the

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1 *On democracy in America* Tocqueville presented in two volumes: the first one appeared in 1835, volume II in 1840. See: A. de Tocqueville /2005/: *Odemokracji w Ameryce*, trans. B. Janicka, M. Król, Warszawa.

New Continent. Beaumont was a faithful friend of Tocqueville and also prepared the first edition of Tocqueville's collections<sup>2</sup>.

The main purpose of Tocqueville and Beaumont's journey to America, however, was to explore new pioneer penitentiary systems: the Pennsylvania<sup>3</sup> and the Auburn<sup>4</sup> systems. The results of the research were presented in a report that appeared in 1833.<sup>5</sup>

The subject of American prison was also very popular then in Europe we can even speak of a "penitentiary fever"<sup>6</sup>, which in 1825–1840 prevailed in France<sup>7</sup>. The subject was alive and certainly young intellectuals willingly went to explore it<sup>8</sup>. Tocqueville and Beaumont's research involved visiting prisoners and looking at the everyday life of prisoners in prisons in both systems, conducting interviews and conversations with the staff, management and prisoners themselves, getting acquainted with prison regulations, architecture, etc. In the report, Tocqueville and Beaumont<sup>9</sup> presented the results of their research, provided them with their comments and opinions, presented statistical data illustrating the assumptions, goals and manner of operation in practice of these penitentiary systems. They transferred the whole analysis into the French realities, pointing to the best possible ways of applying penitentiary system to the French ground, after thorough analysis of the specificity of the French society and system. The report presents the organizational structure, objectives and their implementation.

2 A. de Tocqueville /1987/: *Wspomnienia*, translation A. W. Labuda, Wrocław.

3 Pennsylvania penitentiary system (separate system) was created in 1791 in Pennsylvania, the US state. It was based on uninterrupted loneliness, which was supposed to lead to the improvement of the villain. Punishment in the separate system consisted in the complete isolation of a prisoner, who was constantly in a single cell with the Bible. The reading of the Bible and other religious scriptures was meant to provoke remorse and bring the criminal to the path of law. The only work the convicted could do was limited to activity the prisoner could create without leaving his cell. Loneliness was the main point around which the organizational unit of the prison was focused. See: *Pennsylvania System of Prison Discipline* in: V. L. Williams /1979/: *Dictionary of American Penology. An Introductory Guide*, Westport, pp. 199–202.

4 Auburn penitentiary system (silent system) was created as a modification of the separate system. Total silence has been supplemented with work. Prisoners stayed with solitary nights and common work during the day. The rigor of absolute silence and the prohibition of any communication between prisoners working together have caused the compulsion to use disciplinary measures (mainly flogging) by the guards. See: *Silent System* in: V. L. Williams: *op. cit.*, pp. 28–31.

5 G. de Beaumont, A. de Tocqueville /1833/: *On the Penitentiary system in the United States and its application in France; with an appendix on penal colonies, and also, statistical notes translated by Francis Lieber*; Philadelphia.

6 L. Rabinowicz /1933/: *Podstawy nauki o więziennictwie*, Warsaw, p. 42.

7 M. Tracz-Tryniecki /2009/: *Mysłpolityczna i prawna Alexisa de Tocqueville*, Kraków, p. 372.

8 Francis Lieber also pointed to this fact by adding in the footnote *On the Penitentiary System in the United States and its application in France with an appendix on penal Colonies and also Statistical notes* information that American modern prison systems are often and willingly written about. Lieber recalled the names of Julius, Lagarmitte and Mittermaier, whose works on this subject had already been created before Tocqueville and Beaumont went to America. G. de Beaumont, A. de Tocqueville /1833/: *op. cit.*, p.20.

9 Tracz-Tryniecki emphasizes that the main part of the Report was written by Beaumont, because Tocqueville at that time was already working on: *On democracy in America*. Tocqueville also had a substantial contribution by adding comments and all attachments. M. Tracz-Tryniecki /2009/: *op. cit.*, p. 372.

Francis Lieber was the guide of Tocqueville and Beaumont in the United States and penitentiaries. He was an American intellectual of German origin, who, from that moment, became interested in the issue of criminal punishment. After the departure of French guests he began his own research on penitentiary systems of the Pennsylvania and Auburn penitentiary systems. Lieber never concealed drawing his thoughts from the famous predecessors, but in the theory of punishment and his thoughts about implementation of punishment, one can also see a few differences between him and Tocqueville and Beaumont.

In this work, the aim is to show the results of the visits included in the report, as well as to present the opinions of Tocqueville and Beaumont on the Pennsylvania and Auburn penitentiary systems. The aim of the work is also to bring the more interesting comments of Francis Lieber closer, which were presented by the French authors of the report.

In this article I analyse the effect of Tocqueville and Beaumont's research, shown in the report, translated into English from French under the full name "On the Penitentiary System in the United States, and its Application in France; with an Appendix on Penal Colonies, and also Statistical Notes"<sup>10</sup>. This report was translated by Francis Lieber and published in Philadelphia in 1833. The English version is not a pure translation, Lieber added his own introduction, and many footnotes in which he often emphasized the facts omitted by the authors, expressed his opinion, presented his own arguments or referred to the arguments of other thinkers. At the end, Lieber also added the article "Penitentiary System of Pennsylvania" from the "Encyclopaedia Americana", (the first American compendium of knowledge, of which Lieber was the originator and main editor). Also in this passage, Lieber added some elements that were not included in the original from *Americana*.

In this work, the most important information about the Pennsylvania and Auburn systems will be presented, which in the report were shown by Tocqueville and Beaumont as the result of their research in American prisons. The way of thinking about the punishment and the manner of its implementation by the authors of the report will also be presented, which often contain thoughts of sociological, criminological and penological nature. It is also interesting how the report's translator, Francis Lieber comments on the information contained therein. At appropriate proper moments, the polemic of the translator with the authors of the report will be presented.

All this will present a picture of the nineteenth-century American penitentiary systems as seen through the eyes of European intellectuals who situate their analysis in an ideological and sociopolitical context. By analyzing the penitentiary system, the approach to punishment and a special emphasis on its functions (especially resocialization), the authors point to their own vision of man and society.

10 The title of the French original: *Du Système Pénitentiaire Aux États-Unis et de Son Application en France; suivid'unappendicesur les Colonies Pénales Et de Notes Statistiques par mm. Gustave de Beaumont et Alexis de Tocqueville, Avocats a la Cour Royale de Paris, Membres de la SociétéHistorique de Pennsylvanie*. Paris, 1833.

# 1. INFORMATION AND OBSERVATIONS MADE BY ALEXIS DE TOCQUEVILLE AND GUSTAVE DE BEAUMONT ABOUT PENNSYLVANIA AND AUBURN PENITENTIARY SYSTEMS

All the reflections on the penitentiary system, principles of its functioning, ideological and practical foundations are focused on one particularly emphasized element of punishment: actions to correct the prisoner.

## 1.1. *The term of crime*

In the context of the criminological theory, Tocqueville and Beaumont formulate a sentence, for example on the nature of crime as a punishable act. In their opinion, crime is an act that is punished in its nature only where it is rare<sup>11</sup>. In this way, they speak of behaviours that remain within the norms maintained in a given community and those that are outside them. The authors of the report emphasize that crimes are the kind of behaviour, that go beyond social norms and that is the reason why they are punished. Thus, criminal behaviours are the ones that occur the least frequently among all behaviours in society. Behaviours consistent with the norms occur most often, the community is familiar with them and is accustomed to them. Such a perspective is an example of an interesting approach, not delving into the issues of even the social harmfulness of an act and other social consequences of a criminal act. In this way, the authors try to explain the differences between the US states in criminalizing crimes, which in their opinion also prevent any comparison from the criminological and penological point of view.

## 1.2. *The aims*

The reformation has become a breakthrough and a major centre in which a new penitentiary system was organized. Beaumont and Tocqueville suggest the corrective opportunities as the main argument for different variants of the solitary confinement system. All other arguments are also most often analysed in terms of fulfill or not fulfill the aim of correction. The improvement is the whole core of a new penitentiary system at that time. “Reformation of the guilty is the object of penitentiary system itself” – clearly emphasized Tocqueville and Beaumont<sup>12</sup>.

The second most important element of the silent and solitary confinement system (without distinction between the Pennsylvania and Auburn systems, the similarities and differences noted by the authors of the report will be presented below), is to **prevent the mutual deterioration** of the prisoners. Isolating every prisoner is the simplest, and, according to Tocqueville and Beaumont, the best way to prevent their destructive influence on each other. They say that the system is based on the highest philosophy, which is simple and effective, but also contains many difficul-

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11 G. de Beaumont, A. de Tocqueville /1833/: *op. cit.*, p. 71.

12 G. de Beaumont, A. de Tocqueville /1833/: *op. cit.*, p. 44.

ties in its practical implementation<sup>13</sup>. Each of these difficulties is discussed by the authors, who compare arguments, which will also be summarized in the further part of this work. However, all considerations always and consequently aim at assessing the correction, or at least, avoiding the deterioration of the prisoners. Tocqueville and Beaumont clearly emphasize that “Nothing, certainly, is more fatal to society than this course of mutual evil instruction in prisons<sup>14</sup>”. The moral basis for the need to implement reforms is precisely the prevention of mutual deterioration. The authors emphasize this duty exceptionally, because they juxtapose it with the prisons of the old system, as they call them: “oldprisons”, in which such a procedure was unlimited, as well as mutual contacts between prisoners. The logic presented by Tocqueville and Beaumont, repeating after the creators of the system, is simple. To prevent destructive influence, it is first necessary to isolate criminals. It seems simple and effective.

The lack of action “aggravating” the prisoner is already a great basis for actions that will improve him. The authors of the report ask themselves, what is the improvement at all? They note that correction is something more complicated than defining it through the sentence: changing the wicked man into a fair man. Tocqueville and Beaumont notice many aspects of correction, that go beyond the change in behaviour to the law and that’s why they consider real correction to be extremely rare. They also emphasize that the actual correction often does not harmonize with what we might call a correction in formal sense.

### *1.3. Tocqueville’s and Beaumont’s opinion about correctional plan in separate and silence penitentiary systems*

For Tocqueville and Beaumont, the recipe for reform the prisoner is simple and effective in its simplicity. They write: “Can there be a combination more powerful for reformation than that of a prison which hands over the prisoner to all the trials of solitude, leads him through reflection to remorse, through religion to hope; makes him industrious by the burden of idleness, and which, whilst it inflicts the torment of solitude, makes him find a charm in the converse of pious men, whom otherwise he would have seen with indifference and heard without pleasure”?<sup>15</sup> These sublime words in practice meant loneliness, work and mainly religious instructions.

Work accompanies the prisoners in almost every prison run according to the separate scheme. It looks different depending on the given penitentiary unit. The general rule pointed to one common element – solitary work in silence. In Pennsylvania-type prisons, the work was carried out in a single-detention facility and in Auburn-type prisons, work was carried out in common halls by the order of silence. Tocqueville and Beaumont report that in prison in Auburn and Baltimore, large production factories are organized in prison, where prisoners performed various

13 “This system of reform is undoubtedly a conception which belongs to the highest philosophy; in general it is a simple and easy to be put in practice; yet it presents in its execution, a difficulty sufficiently serious”. *Ibid.*, p.53.

14 *Ibid.*, p. 49.

15 *Ibid.*, p. 51.

activities in various fields. In Boston and Sing-Sing prison, all prisoners' activities are homogenous, they worked on stone cutting. The Wethersfield prison, just like Auburn, has production halls, but on a smaller scale.<sup>16</sup> In a prison in Philadelphia, in their solitude cells, prisoners are working at weaving, sewing shoes, tailoring, carpentry.<sup>17</sup>

Working in prison, according to the authors of the report, gives the prisoner only benefits. They call it “beneficial”, because it gives relief in the burden of unbearable inactivity. In addition, while working in the prison, the prisoner has the opportunity to learn a profession, an activity that can become his source of legal living after leaving prison<sup>18</sup>. Tocqueville and Beaumont write: “Visiting these various establishments, we have been surprised by the order, and sometimes the talent, with which the convicts work; and what makes their zeal quite surprising, is, that they work without any interest in its produce”.<sup>19</sup> Tocqueville and Beaumont also say that during interviews with prisoners, none of them spoke about work differently than with a large degree of gratitude.<sup>20</sup> The authors of the report emphasize here, that prisoners do not receive any remuneration for their work. In this way, they pay back to the society for the evil they have done, and the profit generated by the prisoners goes to the maintenance of the prison. After leaving, the prisoner receives a certain amount of money, suitable for reaching the place of his future stay.<sup>21</sup> At the same time, authors of report consider this solution too harsh and they propose paying for the prisoner's work, in the way it was practiced then in the Baltimore prison. In the Baltimore penitentiary, every prisoner had a daily norm to work out from which the profit goes to prison and each item produced above this standard was profitable for the prisoner who creates it. When the time of his leave came, the sum worked was transferred to the prisoner. Tocqueville and Beaumont emphasize, that Baltimore practice offers greater productivity than other penitentiaries.

Tocqueville and Beaumont say, that work affects the prisoner soothingly, providing him with a job, teaching him how to perform a practical activity, which may be a chance for him to live honestly. The work done every day teaches them habit of work and disciplines a person: “Labour gives to the solitary cell an interest: it fatigues the body and relieves the soul”.<sup>22</sup> When a prisoner does not want to work, according to Tocqueville and Beaumont, he must be forced to do so, because learning a fair profession is the only chance to find a decent job after being released from prison. Work makes the criminal less offensive to society.<sup>23</sup> Tocqueville and Beaumont present the very advantages of working in a prison and

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16 *Ibid.*, p. 34.

17 Information added by Francis Lieber. *Ibid.*, p. 34.

18 *Ibid.*, p. 34.

19 *Ibid.*, p. 36.

20 *Ibid.*, p. 23.

21 *Ibid.*, p. 36–37.

22 *Ibid.*, p. 23.

23 *Ibid.*, p. 22.

consider it the right and necessary element of modern way of serving a prison sentence.

**Religious instruction** is another essential element on the way to improving the prisoner. It is another pillar of the penitentiary system based on silence.<sup>24</sup> One of the most characteristic and famous elements of the silence and separate systems is the copy of the Bible in every solitary cell. The Bible was the best (and the only) companion of the prisoner, while serving his sentence in solitude it was to inspire reflection and the desire to reconcile. The Bible in each solitary cell is a symbol of all the moral and religious instructions that prisoners were subjected to. The manner of giving religious instruction was also differed depending on the penitentiary unit.

Not all prisoners could make use of the Bible which they had in their cells. Most of them were illiterate. Therefore, the teaching that took place on Sundays (other days devoted to works) was also focused on learning to read and write. Such instructions were voluntary, but often a situation where the number of prisoners willing exceeded the possibilities, the prison staff had to choose among them those who needed such teachings the most.<sup>25</sup>

Sunday was a day devoted to moral and religious education, which was carried out by the priest. The priestly sermons, as emphasized by Tocqueville and Beaumont, were of a general and moral nature that was suitable for followers of various religions.<sup>26</sup> Depending on the variety of the system of solitary punishment, Sunday teaching was conducted in various ways, from visiting priests in each cell, based on individual conversations with the offender, to placement in common rooms, making impossible verbal and visual contact between prisoners. Details on this subject are presented by Tocqueville and Beaumont more broadly when they discuss educational solutions in each visited prison.<sup>27</sup>

In practice, a very important element of the solitude system consisted in a prayer spoken before each meal, the possibility of reading the Bible in the prisoner's every free moment and on Sunday moral and religious instructions. All these activities filled the prisoner's time without sacrificing work and complemented the action of solitude. Tocqueville and Beaumont say: "We can however assert that absolute solitude produces the liveliest impression on all prisoners. Generally, their hearts are fund ready to open themselves and the facility of being moved renders them also fitter for reformation".<sup>28</sup> Moral and religious instruction, same as work in prison, has an effect even in hardened offenders. Tocqueville and Beaumont emphasize, that the influence of teaching always leaves a trace in the morality of the prisoner, which is visible in improving the general moral conditions of prisoners who had access to such teaching.<sup>29</sup>

24 "Moral and religious instruction forms, in this respect, the whole basis of the system". *Ibid.*, p. 49.

25 *Ibid.*, p. 49–50.

26 *Ibid.*, p. 50.

27 *Ibid.*, p. 50.

28 *Ibid.*, p. 50–51.

29 *Ibid.*, p. 59.

#### 1.4. *Advantages and disadvantages of separate and silent penitentiary systems.*

Tocqueville and Beaumont show many advantages of the American solitude and silent penitentiary systems. They mention the three main advantages of the System: at first, it prevents the mutual deterioration of prisoners. Secondly, it creates habits of obedience and diligence, which makes the former criminal become a useful citizen. Thirdly, it enables improvement, conversion, return to the right path.<sup>30</sup> The authors of the report summarize the good sides of American solutions in such a way: “The necessity of labour which overcomes his disposition to idleness; the obligation of silence which makes him reflect; the isolation which places him alone in presence of his crime and his suffering; the religious instruction which enlightens and comforts him; the obedience of every moment to inflexible rules; the regularity of a uniform life; in a word, all the circumstances belonging to this severe system, are calculated to produce a deep impression upon his mind. Perhaps, leaving the prison he is not an honest man; but he has contracted honest habits”<sup>31</sup>

Tocqueville and Beaumont do not present American penitentiary solutions, as it might seem, in superlatives. With a more detailed discussion of each visited prisons, they indicate defective elements of their conduct. They also directly assess such a system as very strict in its assumptions. They write firmly: “Whilst society in the United States gives the example of the most extended Liberty, the prisons of the same country offer the spectacle of the most complete despotism”<sup>32</sup> However, according to them, the most important thing, is the achievement of a breakthrough in the manner of imprisonment, the transition from prison to the penitentiary system, in which the predetermined goals are realized in a rightly recognized way, based on a certain philosophy. When issuing opinions about this strict system, the most important thing for them, is not to turn back from this progressive path. Many times Tocqueville and Beaumont emphasize, that the old system of the so-called “oldprisons” brought all that the new American penitentiary solutions try to avoid. In spite of many disadvantages and controversies, they remain in support of the general assumptions and philosophical foundations of the American modern prison system. On the subject of practice already at the level of specific penitentiary units, they speak less optimistically, which will be outlined below.

Pennsylvania and Auburn system adopted what the American penitentiary systems divide at that time in literature. Tocqueville and Beaumont use a similar distinction; however, being eyewitnesses of prison practice, they saw the differences between each unit, which the new system introduced, adapting it to their own needs and introducing their ideas into life.

In this study, for simplicity, I will also use this dichotomous distinction, recalling specific names of prisons only as part of illustrating the differences in the practical functioning of prisons.

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30 *Ibid.*, p. 59.

31 *Ibid.*, p. 58.

32 *Ibid.*, p. 47.



## 2. DIFFERENCES BETWEEN PENNSYLVANIA AND AUBURN PENITENTIARY SYSTEMS (WITH LIEBER'S COMMENTARY)

The **Pennsylvania system** differed from the Auburn system mainly because the prisoner lived in a solitary cell for 24 hours a day. His whole world was limited to his cell, and his whole life was in a cell. He worked, received moral and religious teachings, read the Bible and sometimes saw guards in the cell. Thanks to this, as emphasized by Tocqueville and Beaumont, taking over of any bad influence from other prisoners was practically limited to zero, because it was physically impossible.<sup>33</sup> Therefore, avoiding the deterioration, according to the authors of the report, is easier to be achieved in the Pennsylvania system than in the Auburn system prisons.<sup>34</sup> The total solitude also meant that for the prisoner, the slightest opportunity to experience the presence of another man was a great reward. For this reason, prisoners have more benefits from meeting priests or prison guards because they will be eager to contact with other people. Tocqueville and Beaumont write: "Nothing distracts, in Philadelphia, the mind of the convicts from their meditations; and as they are always isolated, the presence of a person who comes to converse with them is the greatest benefit, and one which they appreciate in its whole extent. When we visited this penitentiary, one of the prisoners said to us: *it is with joy that I perceive the figure of the keepers, who visit my cell. This summer a cricket came into my yard; it looked like a companion. When a butterfly or any other animal happens to enter my cell, I never do it any harm*".<sup>35</sup> The authors of the report quote this as proof of the "alleviation of the soul" of the former villain in solitary confinement. The prisoner's statement, however, shows a huge loneliness balancing on the border of mental disorders, when he starts noticing companions even in the incoming insects. Tocqueville and Beaumont pointed to the immense threat of deteriorating mental health and the cruelty of loneliness. They write: "Solitude is a severe punishment, but such a punishment is merited by the guilty. Mr Livingston justly remarks, that a prison, destined to punish, would soon cease to be a fearful object, if the convicts in it could entertain at their pleasure these social relations in whom they delighted, before their entry into the prison".<sup>36</sup> The severity, that Tocqueville and Beaumont justify with the perpetrator's guilt, is indicated by Francis Lieber in the footnote. He emphasizes that lonely imprisonment has many opponents of its

33 Francis Lieber in developing his own research in this type of prisons, however, indicates that even in the Pennsylvania system, prisoners were able to maintain some kind of communication, for example, by knocking on the wall of the cell, only to hear the answer – also a few knocks. See: *A popular Essay on Subjects of Penal Law and on Uninterrupted Solitary Confinement at Labour as Contra distinguished to Solitary Confinement at Night and Joint Labour by Day, in a Letter to John Bacon Esquire, President of the Philadelphia Society for Alleviating the Miseries of Public Prisons*, Philadelphia 1838.

34 G. de Beaumont, A. de Tocqueville /1833/: *op. cit.*, p. 52.

35 *Ibid.*, p. 51.

36 *Ibid.*, p. 22. Edward Livingston, to whom the authors refer in this passage, was the Secretary of State of the United States and Francis Lieber dedicated the English-language version of the report to him, among others.

time and many voices speak firmly against it which stands in opposition to Livingstone, their supporter.<sup>37</sup>

According to Tocqueville and Beaumont, “The Philadelphia system being also that which produces the deepest impressions on the soul of the convict, must affect more reformation than that of Auburn. The latter, however, is perhaps more comfortable to the habits of men in society and on this account effects a greater number of reformations, which might be called legal, inasmuch as they produce the external fulfillment of social obligations”.<sup>38</sup> The Pennsylvania system, in their opinion, is more conducive to internal improvement of the prisoner, while the Auburn system creates external manifestations of change in it, consisting in fulfilling social duties. They believe, that the first one produces honest people and the second one obedient citizens.<sup>39</sup>

The Pennsylvania system, however, is much more expensive in terms of building a prison and in its maintenance.<sup>40</sup> The authors of the report say, that in a solitary cell, the prisoner has everything he needs to maintain physical health, both hygienic conditions for which he has to take care of, as well as the strictly set schedule, also caring for his health (e.g. regardless of the season, prisoners had to spend an hour a day on their own fragment of the yard). No disciplinary punishment had to be inflicted because, as Beaumont and Tocqueville say, the imprisonment is the disciplinary measure itself in this system and the only additional punishment laid down in the rules is being put in a dark cell with reduced food<sup>41</sup>. The authors also emphasize, that Pennsylvania was the only state which opposed the use of corporal punishment in prisons and introduced their ban into their legal regulations.<sup>42</sup>

The Auburn penitentiary system was also based on the prisoner’s loneliness, the purpose of which was to arouse the prisoners’ reflection and willingness to improve. However, the prisoner’s total solitude was limited to the night, while prisoners spent time working in common production halls during the day. Changing the organization of work resulted in a number of modifications on other levels of the prison life, which was also noticed by Alexis de Tocqueville and Gustave de Beaumont during their prison visits.

When discussing the beginnings of the Auburn system, the authors of the report emphasize, that no one can be attributed with its authorship, it appeared through natural progress along with the thought of refining and adjusting the manner of punishment to practical prison needs.<sup>43</sup> According to Tocqueville and Beaumont, isolation and work are two basic determinants of a correct penitentiary system that can lead to correction in prison. Their opinion on this subject is no different from the general opinion of advocates of those penitentiary solutions. The

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37 Footnote added by Lieber. *Ibid.*, p. XII.

38 *Ibid.*, p. 59.

39 *Ibid.*, p. 60.

40 *Ibid.*, p. 74.

41 *Ibid.*, p. 39–40.

42 *Ibid.*, p. 45.

43 *Ibid.*, p. 7.

authors of the report say that when prisoners are lonely, but they do not work, they cannot be improved, and as an example of this situation, they give the old prison in Auburn before the reform. Similarly to the correction of prisoners cannot take place, in their opinion, in a prison where the prisoners work, but the principle of loneliness is not preserved. The prison in Baltimore is an example of such a prison.<sup>44</sup> The solution created in Auburn seems to be a recipe for both issues – it both allows you to work in a common room during the day and leave a beneficial effect of silence (for loneliness, total isolation cannot be spoken of – prisoners see each other because they work together). This solution, according to Tocqueville and Beaumont, brings some inconvenience, but also presents many advantages.<sup>45</sup> The authors of the report write: “They are united, but no moral connection exists among them. They see without knowing each other. They are in society without any intercourse; there exists among them neither aversion nor sympathy. (...) Their union is strictly material, or, to speak more exactly, their bodies are together, but their souls are separated; and it is not the solitude of the body which is important, but that of the mind”.<sup>46</sup> Tocqueville and Beaumont repeat after the supporters of the Auburn system, that joint workshops do nothing dangerous, and that the prisoners manage to preserve “loneliness” in the community.<sup>47</sup> They also emphasize, that the prisoners have a perfectly preserved silence, and during their visits they have never met a talking prisoner.<sup>48</sup> The authors of the report ask the question: how is it possible, that such rigorous discipline is preserved, despite the fact that there are definitely more prisoners than guards? The answer is surprising: “And why there nine hundred collected male factors less strong than the thirty individuals who command them? Because the keepers communicate freely with each other, act in concert, and have all the power of association; whilst the convicts separated from each other, by silence, have, in spite of their numerical force, all the weakness of isolation”.<sup>49</sup> Thus, discipline is maintained thanks to the cooperation of the guards, which exists because of communication. Prisoners do not have such communication, so they are not able to organize themselves to break this prison discipline.

Tocqueville and Beaumont present, that prison in the Auburn system gives the prisoner the most benefits, both in terms of creating a field for improvement and learning a useful occupation, a working habit. They also emphasize, that the Auburn system will create socially desirable habits in prison that the Philadelphia system will not be able to produce. Francis Lieber added footnote about it, in which he presents his opinion on the Auburn system and the discipline of silence in simple words: “Our opinion is directly the reverse. The prisoner in Philadelphia is calmed, the prisoner in Auburn irritated”.<sup>50</sup>

44 *Ibid.*, p. 22.

45 *Ibid.*, p. 24.

46 *Ibid.*, p. 24.

47 *Ibid.*, p. 24–25.

48 *Ibid.*, p. 24–25.

49 *Ibid.*, p. 26.

50 *Ibid.*, p. 25.

Tocqueville and Beaumont also point that elements of practice do not always correspond to theoretical assumptions. They talk about, for example, disciplinary measures, that turn out to be necessary in maintaining the rigour of absolute silence. The main means of achieving this goal is to use corporal punishment, a whip. They report that in prisons, such as Auburn, Sing-Sing, Boston, Wethersfield, Baltimore, flogging penalties are applied in the event of non-compliance with the prison regulations.<sup>51</sup> The authors submit this issue to a broader analysis. Tocqueville and Beaumont compared the above-mentioned prisons they had visited, and in which they explicitly indicated the use of corporal punishments. By juxtaposing information they obtained during the visit, they came to the conclusion that the frequency of flogging is directly related to the number of prisoners detained in a prison. The more prisoners, the more often the punishment of flogging is used to maintain order. The Wethersfield prison is the mildest in this juxtaposition, in which the use of corporal punishment was described as very rare, with a total of 200 prisoners. A little more often, however, as the authors emphasize, still such cases were “extremely rare” in Auburn, in the walls of which 650 prisoners execute their sentence. Then, we have the Boston and Baltimore prisons, in which flogging is used “a little more often than in Auburn, however, much less than in Sing-Sing. The Sing-Sing prison, in this respect, according to the authors, leads the way, with the number of 900 inmates, the frequency of corporal punishment there is the highest.<sup>52</sup>

Tocqueville and Beaumont emphasize that flogging is not an activity that guards do willingly, similarly prison inspectors do not like to participate in such events: ““(…) but the obligation of the inspectors to be present at such punishments, was so frequently inconvenient, and caused them such painful feelings, that they asked immediately to be absolved from this duty”.<sup>53</sup>

Corporal punishment to maintain rigour in prison is described by the authors of the report as an unpleasant but necessary issue. In their opinion, society has the right to everything necessary to maintain order. In particular, this applies to people who did not comply with the law. Tocqueville and Beaumont say that you should not have doubts about the means by which prison discipline is maintained, because they are used on prisoners, people who are somewhat deprived. In their opinion, it would be unfair to honest people to treat criminals as well as righteous people. Therefore, the prison must be burdensome in order to deter. Then, however, Tocqueville and Beaumont remind that the most important function of imprisonment in a modern penitentiary system is to improve, change the prisoner.<sup>54</sup>

Despite of many voices against the use of corporal punishment in prisons, which the authors notice and cite, Tocqueville and Beaumont advocate of their use to keep order in prison. As an argument for the effectiveness of corporal punishment, they recall the fire that was in Auburn prison on October 23, 1829. Because of the threat to life, the prisoners were released from their cells, but the order

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51 *Ibid.*, p. 41.

52 *Ibid.*, p. 41.

53 *Ibid.*, p. 43.

54 *Ibid.*, p. 44.

was not disturbed even for a moment, everyone was helping to extinguish the fire and no one took the opportunity to escape from the prison<sup>55</sup>.

The translator of the report, Francis Lieber, advocated against corporal punishment, and added his observations and arguments on this subject.<sup>56</sup> He states that the punishment of flogging irritates the soul of the condemned, leads to release of a greater sense of hatred and the desire to take revenge on his tormentors. Lieber stressed this fact in other studies on penitentiary systems.<sup>57</sup>

Tocqueville and Beaumont in the report emphasize that the flogging does not aim at humiliating, but fulfilling the consequences of non-compliance with the regulations.<sup>58</sup> Francis Lieber strongly disagrees, says that every corporal punishment humiliates. Lieber writes that the flogging imposed in prison as a disciplinary punishment should not take place, because through the humiliating way of punishing we strengthen the prisoner's feeling of alienation from society, we arouse irritation, fear, anger and feelings of injustice. And this blocks any chances of its correction. Lieber also emphasizes that the possibility of such punishment also causes the danger of abusing power by dishonest guards who may even provoke convicts to non-statutory behaviours to punish someone in this way. The brutality of flogging, according to Lieber, only deepens the brutal nature of man and does not bring any positive effects.<sup>59</sup>

The Auburn system was also analysed by Tocqueville and Beaumont economically. They also presented the exact calculation, like in the Pennsylvania case, of the construction and maintenance costs of the Auburn system prison. The Auburn solution turned out to be cheaper to build and maintain. The authors also emphasized that the joint work of prisoners makes production much more efficient and profitable.<sup>60</sup>

Alexis de Tocqueville and Gustave de Beaumont also attempted to check the efficiency of both systems in the most readable way that is by means of numbers. They tried to trace what could be the best proof to the success or failure of the new system that is crime statistics. However, the case turned out to be more difficult to investigate, than they initially expected, mainly due to differences in the conduct of crime statistics in individual US states. They also came to the conclusion that a reliable indicator by which one could judge the efficiency of a penitentiary system could only be statistics of return to crime (prison), and thus, the return to prison of people who had already been subjected to the impact of new systems. Tocqueville and Beaumont strongly emphasized that prison only affects the morals of prisoners, and that no prison system can ever be judged by means of statistics of overall increase or decrease in crime in the society<sup>61</sup>. Authors attempted to analyse the

55 *Ibid.*, first footnote on p. 43.

56 *Ibid.*, second footnote on p. 45.

57 See: F. Lieber: *op. cit.*

58 They refer to this argument on the example of a navy in which the punishment of flogging for disciplinary purposes is also applied, G. de Beaumont, A. de Tocqueville /1833/: *op. cit.*, pp. 44–45.

59 F. Lieber: *op. cit.*, pp. 50–51.

60 G. de Beaumont, A. de Tocqueville /1833/: *op. cit.*, pp. 75–76.

61 *Ibid.*, pp. 66–67.

available statistics of return to prison in various visited establishments, however, they concluded that their period of operation is too short to be able to issue a final verdict assessing them.<sup>62</sup>

### 3. SOCIAL CAUSES OF CRIME AND CRIME STATISTICS INDICATED BY TOCQUEVILLE AND BEAUMONT

While reflecting on various types of crime statistics, Tocqueville and Beaumont presented elements in the society, which may have an impact on the entirety of detected and recorded crime in general macro-perspective.

Tocqueville and Beaumont came to similar conclusions when they considered the aspect of general education in various US states. They found a clear connection between access to education and the number of committed crimes. However, they noticed that it is a mistake to perceive this relationship in such a simple way. The authors of the report gave the example of New York, where the increase of crime raised simultaneously with the increase of access to general education. In this case, they notice dependence: in New York, there are a very large number of immigrants arriving every year.<sup>63</sup> Tocqueville and Beaumont also presented other examples that can be summarized, showing the characteristics of society that affect the shape and size of crime in the given state or city of United States. In these considerations, they analysed social elements, characteristic mainly for the United States, but at the same time they stressed their universal significance for crime in any country in the world.<sup>64</sup> The authors of the report did not analyse various penal codes in individual US states, they did not go deeper into the analysis of why certain behaviours in a given state are penalized and not in others. They focused only on the properties of society affecting total crime.

Factors that have an impact on crime are very complex and numerous. Tocqueville and Beaumont illustrate this opinion with a set of elements from social life that affect crime:

- the aforementioned access to general education (also related to the possibility of “honest” profession),
- the degree of misery in society (broadly understood as the level of poverty),
- general moral state of the society (I interpret this expression used by the authors as a set of informal social norms functioning in society and how they differ from the formal legal norms, explicitly it is a social consent for more or less lawful behaviour),
- a large number of “bad habits” in the society (the authors are mainly concerned with behaviours related to various addictions, they recall the example of alcoholism – the more it is in the community, the more crimes are committed),

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62 *Ibid.*, pp. 68–69.

63 *Ibid.*, p. 62–63.

64 *Ibid.*, p. 62–68.

- the above-mentioned number of arriving immigrants (Tocqueville and Beaumont spoke generally about all visitors, but it is interesting to consider black people who are on the one hand immigrants, and on the other liberated slaves. The authors of the report write that a larger number of black people affects more crime "(...) In those states in which there exists one Negro to thirty Whites, the prisons contain one Negro to four white"<sup>65</sup>. Tocqueville and Beaumont emphasize that this is associated with the liberation of slaves, which is allowed, for example, in Maryland, and there, among others, this phenomenon can be observed. They also emphasize that the vast majority of arriving migrants, regardless of their skin colour, start living in a completely new place from scratch, which can quickly lead to the path of crime in the event of an initial failure).<sup>66</sup>
- Any political circumstances, such as, for example, the state after the war, as in 1816, when the number of prisoners in all American prisons increased drastically. After the United States' war with England, "Peace having been concluded, a number of regiments were disbanded, and the soldiers thus deprived for the moment of employment"<sup>67</sup>, and the unemployed veterans would surely also take up breaking the law.
- Greater police activity connected with focusing public attention on specific types of crime. Consequently, the greater manifest of a type of crime, which was previously committed exactly the same quantity but was not detected, therefore, statistics indicate its increase.

Tocqueville and Beaumont summarize: "However this may be, it is clear from the above, that the increase of crimes or their decrease, is produced sometimes by general causes, and sometimes by accidental ones, which have no direct connection with the penitentiary system".<sup>68</sup> They return with this idea to the merits of the report, that is, to the considerations to assess the systems of new American prisons. By means of sociological observations from the macro-social perspective of individual states of the USA, they prove that there are many factors that should be taken into account when reading statistics on the number of crimes committed, criminals being sent to prison and their return to prison.

#### 4. WOMEN AND CRIME

A small fragment of the considerations of Tocqueville and Beaumont was also devoted to the issue of committing crimes by women. Above all, they stressed that women commit significantly fewer crimes than men, and hence there are far fewer women imprisoned. For this reason, no independent facility of the Pennsylvania or Auburn system was created for women in the then United States.<sup>69</sup> They also re-

65 *Ibid.*, p. 61.

66 *Ibid.*, p. 61–63

67 *Ibid.*, p. 65.

68 *Ibid.*, p. 66.

69 *Ibid.*, p. 39.

called the funny argument of some thinkers who claimed that introducing a system of total silence and quiet for women would be very difficult because of their talkative nature.<sup>70</sup> Tocqueville and Beaumont, however, disagreed with this sentence, recalling the example of the Wethersfield prison, in which women, like male prisoners, stayed in solitary cells at night, and kept silent during the day.<sup>71</sup>

The authors of the report formulated an interesting view on women in which they stated that morality in society largely depends on the morality of the women in it. They analysed woman in the terms of the social role of the mother. They pointed out that such a social role entails the transmission of moral values, which is much greater than in the case of the role of the father in the family. Tocqueville and Beaumont believed that the morality taken out of the family directly affects the whole society and the morality of the family is shaped by a woman.<sup>72</sup>

## CONCLUSION

Alexis de Tocqueville and Gustave de Beaumont after visiting the American penitentiary establishments in 1831 in the report “On the Penitentiary system in the United States...” presented a detailed description of the prisoners of the Pennsylvania and Auburn system. They described the operation not only two mentioned penitentiaries, but also other American prisons, which drew the pattern from the Pennsylvania or Auburn prisons and interpreted them in their own individual way. In the report, Tocqueville and Beaumont described the main principles, that were in force in these penitentiary systems, assumptions, goals and ways to implement them, practical solutions to problem areas, with the presentation of statistical data illustrating the whole.

They also submitted their opinions on the punishment and the manner of its implementation, and often expressed their opinion on the subject of controversial issues. However, from all their arguments, it can be said that they were supporters of both American penitentiary systems, it seems that mainly because they were the first, which operated according to a well-thought-out plan. They considered the Auburn system as a more practical one. They emphasized that loneliness, work and religious and moral education are the best means on the way to the goal of correcting the prisoner.

Analysing the practical operation of individual American prisons that they visited, they also saw negative elements, which they also discussed. In the description contained in the report, Tocqueville and Beaumont pointed to the disadvantages of the Pennsylvania and Auburn systems, such as the great severity of the regime of both systems, limited access to Sunday teaching or the situation of breaking the principle of loneliness (when religious teaching was organized in shared rooms, thus creating the possibility of contact between prisoners). The authors also em-

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70 *Ibid.*, p. 38.

71 *Ibid.*, p. 39.

72 *Ibid.*, pp. 70–71.



phasized that each prison in its own way implemented the basic principles of the system, which often caused a significant departure from them.

The translator of the report into English, Francis Lieber, disagreed with its authors in several places, emphasizing it in the footnotes he added. In the most opinions, Lieber was in line with Tocqueville and Beaumont. Lieber discussed his considerations on this subject mainly in "A popular essay on Subjects of Penal Law..." published in 1838. It would be very interesting to compare Lieber's opinion on the subject of penalties in general and penitentiary systems of that time with what Tocqueville and Beaumont wrote about the penalty and systems (what was presented in this work). Lieber was very much connected with his French friends, he had many similar views, and he began his interests related to criminal punishment after he met them. Comparison of Lieber with Tocqueville and Beaumont would be very interesting in this context.

Many times through their analysis, Tocqueville and Beaumont pointed to the concepts of a man who is able to improve, to convert, if he is given the right conditions. They emphasized the complexity of issues such as the moral improvement of a human being or crime in society.

Despite the time that has passed since their prison deliberations, despite the total change in the way of imprisonment, Tocqueville and Beaumont indicate that punishment should always be based on assumptions pursuing the chosen main goal. For Tocqueville and Beaumont, such a goal was to improve, convert a man who has left the path of law for various reasons.

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## AMERIČKI KAZNENO POPRAVNI SISTEMI NA POČETKU 19. VEKA U OČIM EVROPSKIH INTELEKTUALACA

### REZIME

Na prelazu iz 18. u 19. vek, u Sjedinjenim Američkim Državama pojavili su se novi kazeno popravni sistemi zasnovani na usamljenosti, religijskom učenju i radu. Njihova ideja je zamišljena tako da kazna ostvaruje i druge funkcije (ne samo odmazdu), a naročito da utiče na popravlanje učinioca. Pensilvanijski kazeno popravni sistem ustanovljen je 1791. godine i imao je precizno određene principe i ciljeve, a glavni cilj je bio popravlanje zatvorenika uz pomoć danonoćnog boravka u samici, rada i Biblije. Oburnski kazeno popravni sistem stvoren je 1821. godine kao varijanta Pensilvanijskog sistema i u njemu su zatvorenici bili izolovani tokom noći, a danju su radili u zajedničkim salama uz apsolutnu zabranu bilo kakve komunikacije. Aleksis de Tokvil i Gustav de Bemont, dva poznata francuska pravnik i intelektualca, 1831. godine otputovali su u Sjedinjene Američke Države kako bi se upoznali sa novim rešenjima u američkim kaznenim popravnim zavodima. Rezultat njihovog istraživanja predstavljao je izveštaj „O kaznenom popravnim sistemu u SAD i njegovoj primeni u Francuskoj; sa dodatkom o kaznenim kolonijama i statističkim podacima“. U njemu su predstavljeni ciljevi, norme i pravila oba kaznenog popravna sistema. Tokvil i Bemont su se tokom ovog istraživačkog putovanja sprijateljili sa svojim vodičem Fransisom Liberom koji je preveo izveštaj „O kaznenom popravnim sistemima...“ sa francuskog na engleski jezik. U svom izveštaju, oni prikazuju činjenice o Pensilvanijskom i Oburnskom sistemu prikazujući njihove prednosti i nedostatke i iznose svoj stav o njima. Osim toga, Tokvil i Bemont razmatraju i mogućnost prilagođavanja francuskom sistemu američkih rešenja do kojih su došli. Takođe, oni diskutuju o pitanjima prikazanim i u ovom članku poput ciljeva kaznenog popravna sistema: reformacije, osamljenosti, rada, religijskog učenja, njihovih prednosti i nedostataka, kao i razlikama između ova dva sistema. Predmet analize bili su i društveni uzroci kriminaliteta i kriminalna statistika. Svoje viđenje kažnjavanja dali su sa kriminološkog, sociološkog i penološkog aspekta. Fransis Liber se takođe osvrnuo na neka sporna pitanja, kaktkad izražavajući neslaganje s autorima. Sve navedeno utiče na sliku američkih kaznenog popravna sistema 19. veka viđenu očima evropskih intelektualaca tog vremena.

**Ključne reči:** Američki kazneni popravni sistem, Pensilvanijski kazneni popravni sistem, Oburnski kazneni popravni sistem, zatvorski izveštaj, penologija.