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FOR THE PROPRIETORS.

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THE COMMITTEE

Appointed at the close of the last session,
"To enquire if it be expedient to alter
the Penal Code of this state; and if
expedient, what alterations were requir-
ed," beg leave to REPORT—

THAT they were prevented, by cir-
cumstances, from assembling during the
recess of the legislature, and have there-
fore not given to the subject, that protract-
ed consideration which its importance
would seem to require. The result how-
ever, of such enquiries as the committee
have been able to make since the com-
mencement of the present session, they
now beg leave to submit; leaving it to the
legislature to determine whether further
information be necessary to an ultimate
decision.

An alteration of the penal code of the
state appears, from reiterated executive re-
commendations, to have been much desir-
ed and long expected; as yet, legislative
caution has not yielded to executive im-
portunity. This caution, it is believed,
has been the effect, not of any supposed
perfection in our criminal law, but of doubts
as to the policy of adopting the particular
alterations recommended. That some al-
terations were required, has never been
denied; that some alterations are now ne-
cessary, the returns of convictions prove.
Many offences are frequently committed,
which our penal code was intended to sup-
press, and which, it is believed, can be
suppressed, or very much lessened.

For these evils, two remedies have been
suggested. The adoption of the peniten-
tiary system, or only so to alter our present
laws, as to increase or diminish the quan-
tum of punishment now apportioned.

Each of these remedies has its advocates;
both in the opinion of your committee are
entitled to consideration. The peniten-
tiary system will be first examined.

Before however, we proceed to this ex-
amination, a few observations will be sug-
gested, intended to establish certain propo-
sitions, which, without pretending to axi-
omatic truth, are supposed sufficiently cor-
rect to induce general acquiescence.

Although the novel situation in which the
people of the United States have been
placed, has rendered the lessons of ex-
perience of less universal importance, here
than elsewhere, it is nevertheless believed
that experience here as elsewhere, will ever
prove the best source of wisdom, and sur-
est foundation of policy. This truth, tho'
seldom denied, is not unfrequently forgot-
ten, or totally disregarded.

It may not be unimportant, on this oc-
casion, to recall to mind that memorable
instance of the fallacy of human wisdom,
when speculating upon laws and govern-
ment, recorded in the early annals of our
own country. Mr. Locke, the profound-
est philosopher of his age, furnished a
form of government and system of laws
for South-Carolina. Mr. Locke's govern-
ment and laws are known to have failed in
every respect. The only laws which have
grown out of the progressive exigencies of
mankind. They are the lessons of expe-
rience, not the suggestions of speculation.
The laws of Solon and Lycurgus have pass-
ed away. The common and civil laws
have lasted for ages and will probably con-
tinue of force for ages to come.

That the only proper object of punish-
ment is the prevention of crimes, is a propo-
sition, though not universally admitted,
essentially correct in the estimation of your
committee.

Vindictive justice is disclaimed.—The
law, which punishes, cannot feel, the law
therefore cannot be vindictive.—If the most
heinous crime could not be repeated by
the offender or another, that crime the law
ought not to punish.

Retributive justice is regarded as fanci-
ful not practical; society cannot be com-
pensated for a crime; felony cannot be
worked out—and if felony could be worked
out, it must always cost more labour, or
what is equivalent to labour, to secure the
labour of a criminal, than his labour can be
worth.

Any other proportion between punish-
ment and crime, than that which effects
the suppression of the crime, is regarded
as visionary. Could the smallest offence be
suppressed by the greatest punishment,
they ought to be attached. If the great-
est crimes could be prevented by the small-
est punishments, it ought to be apportion-
ed; could the same penalty prevent every
crime, there should be but one penalty.

To proportion the punishments with any
degree of precision to the crime, would
appear to involve the following difficulties:
in the first place, the sensibility of the

criminal ought to be ascertained; for the
same punishment would affect very differ-
ently persons of different degrees of sensi-
bility: to one, that punishment might be
torture, which to another, would be little
more than unpleasant.

2dly. The effect of each crime on soci-
ety ought to be ascertained, and this, it is
apprehended can only be approached in a
very remote degree. To kill A, who is a
virtuous, intelligent, and active mem-
ber of society, is much more injurious
than to kill B, who is a worthless vagrant;
on the life of the first, the happiness of
society may materially depend; the death
of the last may be so far beneficial, as to
disencumber society of a drone. No law
giver however, has ever ventured to dis-
criminate between these cases. Extremely
dangerous would it be to discriminate,
and yet without such discrimination, what
pretension can there be to proportion?

3dly. Difficult as it is to ascertain with
any precision, the sensibility of the crim-
inal and the effect of the crime, more
difficult must it be to penetrate the motives
of the criminal. Man is seldom influenced
by a simple motive, and yet when so in-
fluenced, it is difficult of detection. The
more complex his motives, the more dif-
ficult is the task of fixing his criminality,
and yet if proportion between punishment
and crime, mean any thing more than the
quantum of punishment necessary to the
suppression of the crime; it would seem
to refer to the sensibility of the criminal,
the effect of the crime, and the motives
with which it was perpetrated. But if the
exact proportion could be ascertained, it
is difficult to perceive the benefit that
would result. We admire proportion in
architecture; the mind is gratified when
all the parts of a building appear calculated
to effect the purposes for which they were
intended. That a criminal however, has
been punished exactly in proportion to his
sensibility; the effect of his crime and the
motives with which he perpetrated the
crime, would afford no pleasure, it is ap-
prehended, unconnected with the hope
that the crime would not be repeated. On
the other hand it would appear fastidious
in the extreme, to object to a punishment
which suppressed the crime, only because
it was not in exact proportion to the sensi-
bility of the criminal, the effect of the
offence, and the motives with which it had
been perpetrated.

With these observations, your commit-
tee will proceed to the consideration of the
penitentiary system.

The reluctance with which this subject
has always been considered by the legis-
lature, when pressed upon their attention
by executive recommendations, was the
effect, it is believed (as before stated) of
great doubts as to the practical effects of a
theory, which though brilliant had not
been fully tried, and upon which the grow-
ing experience of other states, would in
no protracted length of time, shed a light
which would dissipate all doubt, and pro-
cure a decision in every respect satisfac-
tory. It is to the experience of those
states where the penitentiary system has
been longest tried, that your committee
now propose to look for that light which
shall confirm or dissipate those doubts
which have hitherto existed on this sub-
ject.

In Pennsylvania, where the first Amer-
ican penitentiary house was erected, it
appears from a recent publication entitled,
"A statistical view of the operations of
the penal code of Pennsylvania," that its
operations had "been extremely benefi-
cial for the first two years after its establish-
ment; that of two hundred persons who
had been pardoned, only four had return-
ed." At that period it appears further,
that "the number of convicts was so small
in proportion to the building, that the ap-
artments in the prison and the prison
yard, afforded convenient and ample room
for the separation and employment of the
convicts."

The grand jury of Philadelphia, in a
recent presentment say, "that while they
notice with pleasure, the high degree of
order and cleanliness, they are compelled
by a sense of duty to present as an evil of
considerable magnitude, the present very
crowded state of the penitentiary; the
number of prisoners, of all classes, con-
tinues to increase, so that from 20 to 40
are lodged in rooms 18 feet square; so
many are thus crowded together, that the
institution already begins to assume the
character of an European prison and a
ministry for every vice, in which the unfor-
tunate being who commits a first offence
and knows none of the arts of methodized
villainy, can scarcely avoid the contamina-
tion which leads to extreme depravity."

It appears, further, from the same pub-
lication, "that of 451 convicts now in the
penitentiary of Pennsylvania, 161 have
been confined there before."

The commissioners appointed to ex-
amine into the state of the New-York pri-
son, in their report observe, "It has for
some time past, not only failed of effect-

ing the object chiefly in view, but has sub-
jected the treasury to a series of disburse-
ments; too oppressive to be continued if
they can in any way be prevented." The
cause of this failure is said to be the crowd-
ing together the prisoners, and a relaxa-
tion of discipline. It appears, further,
that a very large proportion of those who
have been committed for the last five or
six years, had been confined there before.

The commissioners appointed to ex-
amine the state prison of Massachusetts, in
their report complain "that the prison is
so crowded, as to defeat the object for
which the institution was erected." They
state, further, "that the only advantages
which the commonwealth appears to de-
rive from the establishment, are—

1st. The protection afforded the com-
munity against the criminals during their
confinement.

2dly. The value of the earnings of the
convicts, which may be supposed to be so
much gain, since the greater part of this
class of men when large, were at the ex-
pense of the community without labor.
But there appears," say these commis-
sioners, "great reason to suppose that the ad-
vantage first mentioned is more than coun-
terbalanced by the greater hardihood and
more settled corruption which a promiscu-
ous association among the convicts must
produce, particularly the young."

It is thought unnecessary to make fur-
ther quotations from these publications, as
they are in the possession of the legisla-
ture, and can be procured by all.

The most attentive examination of these
documents, on the part of the committee,
has been followed by a thorough conviction
that the penitentiary system, as far as it
has been yet tried, has failed.—It is not
however to be concealed, that some hope
yet exists, that solitary confinement may
be so apportioned, as to restore to the sys-
tem, the confidence which it once posses-
sed, but of which, for some time past, it
has been deprived.

Should it succeed, it will be gratifying
to humanity to see its benefits extended to
every portion of the habitable world; and
it is not doubted that in such an event, the
legislature of this state will avail itself of
the earliest opportunity of adopting the
system; but until it has been well tried and
has fully answered, your committee can-
not but believe, it would be unwise in the
legislature to attempt it. The experiments
already commenced are so numerous, and
will probably be conducted with so much
ability, as will leave no doubt as to the re-
sults that may be afforded. It may, in-
deed, be necessary to a full and fair ex-
periment of the system, that some states
should not adopt it; for, to ascertain its
value, it may be necessary to contrast it
with other systems, and this cannot be
done with advantage if all the states were
to adopt it.

It may not be unimportant, even on the
present occasion to contrast the operations
and effects of the penitentiary system,
with the operations and effects of the sys-
tem of criminal law now of force in this
state. To effect this object, returns of
the convictions which have taken place
since 1799, have been procured from
most of the clerks of the district courts.
It is to be lamented that all the clerks
have not complied with the requisitions
made upon them in August last.—A suf-
ficient number however have been procur-
ed, it is believed, to answer the purposes
intended. The comparison will be con-
fined to the last 17 years, as prior to 1800,
the county court system was of force, un-
der which, justice was not only imperfectly
administered, but the records of which
were so badly kept as to furnish at this pe-
riod no data from which the number of
convictions can be ascertained.

The penitentiary system of Pennsyl-
vania has been selected for comparison, as
it is supposed to be the oldest and best
managed in the U. States, and with the
operations and effects of which we are best
acquainted.

It will appear on a reference to the sta-
tistical view of the operations of the pen-
al code of that State, that the convictions
from 1800 to 1809, both inclusive, (for pen-
itentiary offences) were 1,045, giving an
average for each year, of more than 104.

The population of that state in 1800,
(as appears by the census then taken,) was
602,545. In 1810, the population had in-
creased to 810,091, which affords an annual
increase of about 20,754, and an average
population of 623,299, for the ten years pri-
or to 1810. For this period therefore
convictions were to population as 104 are
to 623,299, or as 1 to 5,993.

From 1810 to 1815, inclusive, the con-
victions were 200, giving an average of
more than 145 for each year.

The population probably increased in
each year from 1810 to 1815, in greater
numbers than from 1800 to 1810, but as
the exact increase cannot be ascertained, it
will be computed as the same, the differ-
ence cannot be very great. This would
make the average population from 1810

to 1815, about 830,845.

For this period therefore, convictions
were to population as 148 to 830,845, or
as 1 to 5,615.

It would appear from this statement that
crimes had not only increased numerical-
ly but in a greater ratio than population.

It will appear further on reference being
had to the statistical view that the num-
ber of untried prisoners, returned on the
calenders at the different sessions of the
city and quarter sessions of the county of
Philadelphia, was—

For the year 1813	516
1814	588
1815	829
1816	1058

Had these prisoners been tried as usual,
the number of convicts would have been
greater for these years; which would con-
sequently have increased the average
number of convictions from 1810 to 1815,
and thereby increase the ratio of crimes
for the last period selected for comparison.
Why a greater number of prisoners were
left untried for these years, than usual, is
not explained. It is difficult not to at-
tribute it to the system.

It is stated in the publication above al-
luded to, that the number of convictions
from 1779 to 1786 both inclusive, were
greater than from 1789 to 1793; and that
the penitentiary system was not commen-
ced before 1786. This statement is made
to show that convictions diminished under
the penitentiary system. This effect
however may have been produced by other
adequate causes which existed at the time.
From 1779 to 1783, the United States
were engaged in a bloody civil war, the
most prolific parent of crimes; and altho'
we were enjoying many of the blessings of
peace from '83 to '86 yet it cannot be sup-
posed that during this period society did
not continue to feel many of the evils which
the licentious habits of civil war are calcu-
lated to engender. To compare these
two periods then, is to aid the penitentiary
system with all the advantages of peace
order and good government, and to clog the
former penal code of Pennsylvania with all
the crimes of a civil war. Our object how-
ever, is not to compare the Penitentiary
system of Pennsylvania, with the former
penal code of that state, but to compare it
with the penal code of this state.

By the returns of convictions from 1800
to 1810, both inclusive, it appears there
were in this state, 143 convictions for pen-
itentiary offences, which gives an average
of 14 per year.

From 1800 to 1816, the convictions were
62, which gives an average of 12 per year.

The population of this state in 1800, was
199,440; in 1810, the population had in-
creased to 318,750, which affords a small
annual increase.

From this statement it appears that con-
victions have not only not increased in a
ratio with the population, but have numer-
ically diminished.

As we are unacquainted with even any
circumstances peculiar to this state, which
were calculated to lessen crimes, or with any
circumstances peculiar to Pennsylvania,
which were calculated to increase them, we
are induced to conclude that the penal code
of this state, imperfect as it is, has been
productive of more benefit than that of
Pennsylvania.

Your committee are therefore induced
to recommend, that the penitentiary sys-
tem be not adopted, and that the penal
code of this state be amended as the bill here-
with reported, provides for.

DANIEL E. HUGER,
Chairman of Committee on Penal Code.

A BILL

To alter and amend the Penal Code of
this State.

Be it enacted by the honorable the Sen-
ate and House of Representatives, now
met and sitting in general assembly, and by
and with the authority of the same, That
from and after the passing of this act, if any
person or persons whatsoever be convict-
ed of manslaughter, he, she or they shall
be imprisoned, not exceeding twelve
months, nor less than six months; and shall
moreover be fined in such sum as the
court shall in its discretion think fit.

That in all cases of homicide, the trial
shall be according to the course of the
common law; and if any person or persons
be convicted of murder, if the person kil-
led was a negro, slave, or free person of
colour, he, she or they being so convicted,
shall suffer death without benefit of clergy,
as in other cases, offenders found guilty of
murder, are accustomed to do. And if any
person or persons be convicted of man-
slaughter, if the person killed was a negro,
slave or free person of colour, he she or
they being so convicted, shall be fined in
five hundred dollars; and upon default,
shall be imprisoned six months, unless the
said fine be sooner paid: Provided that
nothing herein contained, shall be taken to
extend to the trial of slaves, according to the
provisions of a certain act, entitled "an act
for the better ordering and governing of