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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 required," beg leave to REPORT—

THAT they were prevented, by circumstances, from assembling during the recess of the legislature, and have therefore not given to the subject that protracted consideration which its importance would seem to require. The result however, of such enquiries as the committee have been able to make since the commencement 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 recommendations, to have been much desired and long expected; as yet, legislative caution has not yielded to executive importunity. 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 alterations were required, has never been denied; that some alterations are now necessary, the returns of convictions prove. Many offences are frequently committed, which our penal code was intended to suppress, and which, it is believed, can be suppressed, or very much lessened.

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

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

Before however, we proceed to this examination, a few observations will be suggested, intended to establish certain propositions, which, without pretending to axiomatic truth, are supposed sufficiently correct to induce general acquiescence.

Although the novel situation in which the people of the United States have been placed, has rendered the lessons of experience 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 suggest foundation of policy. This truth, tho' seldom denied, is not unfrequently forgotten, or totally disregarded.

It may not be unimportant, on this occasion, to recall to mind that memorable instance of the fallacy of human wisdom, when speculating upon laws and government, recorded in the early annals of our own country. Mr. Locke, the profoundest philosopher of his age, furnished a form of government and system of laws for South Carolina. Mr. Locke's government and laws are known to have failed in every respect. The only laws which have been able to stand the test of ages have grown out of the progressive exigencies of mankind. They are the lessons of experience, not the suggestions of speculation. The laws of Solon and Lycurgus have passed away. The common and civil laws have lasted for ages and will probably continue of force for ages to come.

That the only proper object of punishment is the prevention of crimes, is a proposition, 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 enormous crime could not be repeated by the offender or another, that crime the law ought not to punish.

Retributive justice is regarded as fanciful not practical; society cannot be compensated 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 punishment 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 greatest crimes could be prevented by the smallest punishments, it ought to be apportioned; 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 differently persons of different degrees of sensibility: to one, that punishment might be torture, which to another, would be little more than unpleasant.

2dly. The effect of each crime on society 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 member 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 discriminate 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 criminal 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 influenced, it is difficult of detection. The more complex his motives, the more difficult 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 apprehended, 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 sensibility of the criminal, the effect of the offence, and the motives with which it had been perpetrated.

With these observations, your committee will proceed to the consideration of the penitentiary system.

The reluctance with which this subject has always been considered by the legislature, 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 growing experience of other states, would in no protracted length of time, shed a light which would dissipate all doubt, and procure a decision in every respect satisfactory. 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 subject.

In Pennsylvania, where the first American 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 beneficial for the first two years after its establishment; that of two hundred persons who had been pardoned, only four had returned." At that period it appears further, that "the number of convicts was so small in proportion to the building, that the apartments 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, continues 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 seminary for every vice, in which the unfortunate being who commits a first offence and knows none of the arts of methodized villainy, can scarcely avoid the contamination which leads to extreme depravity."

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

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

ing the object chiefly in view, but has subjected the treasury to a series of disbursements, too oppressive to be continued if they can in any way be prevented." The cause of this failure is said to be the crowding together the prisoners, and a relaxation 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 examine 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 derive from the establishment, are—

1st. The protection afforded the community 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 expense of the community without labor. But there appears," say these commissioners, "great reason to suppose that the advantage first mentioned is more than counterbalanced by the greater hardness and more settled corruption which a promiscuous association among the convicts must produce, particularly the young."

It is thought unnecessary to make further quotations from these publications, as they are in the possession of the legislature, 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 system, the confidence which it once possessed, 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 cannot 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 results that may be afforded. It may, indeed, be necessary to a full and fair experiment 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 system 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 sufficient number however have been procured, it is believed, to answer the purposes intended. The comparison will be confined to the last 17 years, as prior to 1800, the county court system was of force, under which, justice was not only imperfectly administered, but the records of which were so badly kept as to furnish at this period no data from which the number of convictions can be ascertained.

The penitentiary system of Pennsylvania 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 statistical view of the operations of the penal code of that State, that the convictions from 1800 to 1809, both inclusive, (for penitentiary 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 increased to 810,091, which affords an annual increase of about 20,754, and an average population of 623,299, for the ten years prior 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 convictions were 890, giving an average of more than 148 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 at the same, the difference cannot be very great. This would make the average population from 1810

to 1815, about 820,845.

For this period therefore, convictions were to population as 148 to 820,845, or as 1 to 5,613.

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

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

For the year 1813	516
1814	538
1815	829
1816	1058

Had these prisoners been tried as usual, the number of convicts would have been greater for these years; which would consequently 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 attribute it to the system.

It is stated in the publication above alluded 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 commenced before 1786. This statement is made to shew 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 1793, 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 '82 to '86 yet it cannot be supposed that during this period society did not continue to feel many of the evils which the licentious habits of civil war are calculated 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 however, 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 penitentiary offences, which gives an average of 14 per year.

From 1800 to 1815, 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 increased to 218,750, which affords a small annual increase.

From this statement it appears that convictions have not only not increased in a ratio with the population, but have numerically 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 system be not adopted, and that the penal code of this state be amended as the bill herewith 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 Senate 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 convicted 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 killed 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 manslaughter, 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