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REPLY

TO

TWO LETTERS

OF

WILLIAM ROSCOE, ESQUIRE,

OF LIVERPOOL,

ON THE

PENITENTIARY SYSTEM

OF

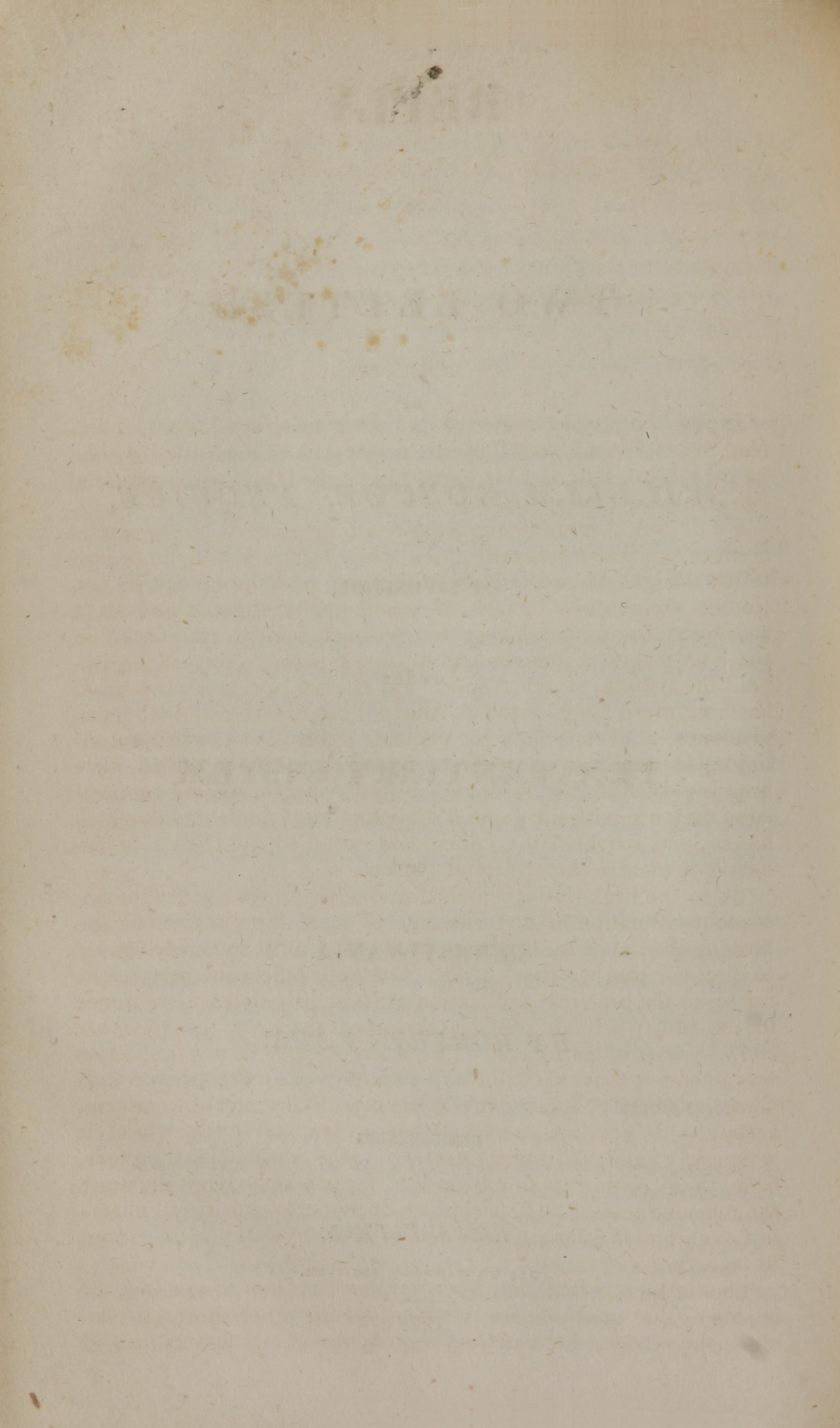
PENNSYLVANIA.

BY ROBERTS VAUX.

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1827



TO WILLIAM ROSCOE, ESQUIRE,

OF LIVERPOOL..

IN the National Gazette of the 10th and 19th instant, I first read thy letters addressed to me, under date of the 24th July and 2d of August last, and originally published in the Commercial Chronicle, at Liverpool.

I will not dissemble the unaffected pleasure it gives me, to observe the lively interest which those letters display in regard to the designs of penitentiary discipline, and the gratifying testimony which they furnish of intellectual freshness, and acute sensibility to human rights and wrongs, seldom manifested in the later stages of the chequered life of man. Nor can I withhold the tribute of my respect and thanks, for what thy mind has heretofore contributed to the philosophy of criminal jurisprudence, and especially for the aids it has lent towards an enlightened decision on several important questions which have been involved in the present correspondence, intimately connected as they are with the general subject of legal punishment, which has so long attracted the notice, and occupied the talents, of benevolent men in America and Europe.

As to the high duties which Christianity enjoins, and the consequent obligation of governments to treat the violaters of the laws in obedience to its benign precepts, I most sincerely rejoice to discover that we think alike. The only difference between us relates to the practical application of those principles, in reference to the utility of the solitary, or, more properly, the *separate confinement* of prisoners. The main purpose of my first letter was to show, that this kind of discipline was in accordance with Christian charity, because it was the most likely means to reform, certainly to prevent, increased corruption and guilt, whilst it adequately punished the criminal. It was reasonable, therefore, from these premises, to expect that thy replies would illustrate the unsoundness of this particular doctrine, which I will cheerfully relinquish, the moment it is proved, by full investigation, to be erroneous.

The letters before me, however, so far from discussing the merits of that question, are intended, among other things, to convince the reader, that *solitary* imprisonment of convicts formed

no *essential* part of the reformed penal code of Pennsylvania; and that, therefore, to enact it now, confirms a position advanced in thy pamphlet, that "*the celebrated system of prison discipline has been abandoned,*" and this, with other new and injurious modes of treatment, were intended to supply its place. Stripped of all irrelevant disquisition, we are at issue upon very circumscribed ground; and I will endeavour, as briefly as possible, to establish what I have heretofore alleged on this point.

Before entering upon the inquiry proposed, I cannot refrain from remarking, that almost a hundred and fifty years have passed away, since the founder of Pennsylvania, and his associates, our honoured ancestors, renounced their obligation to execute the sanguinary code which had been in force in England down to the reign of Charles the Second, and substituted punishments more consistent with the doctrines and duties of Christianity, and the rights of human nature. These principles have ever since exerted a greater or less degree of influence upon the opinions and conduct of legislators. The favoured land we dwell upon is therefore the birth-place of reform in criminal jurisprudence; and although the power of the mother country abrogated for a season the wise penal legislation of her colonial sons, still, in the economy of Divine Providence, it was *here* that the light of legislative mercy first dawned again upon the malefactor.

It will not, I presume, be denied, that we are indebted to the unostentatious and indefatigable labours of the *Prison Society*, for the change which was accomplished in the management of jails in Pennsylvania, and also, primarily, for the abolition of the rigorous and vindictive penalties, which were a second time imposed on this Province in 1713 by Great Britain. It is equally true, that our commonwealth has ever since exhibited great zeal and devotion in this respect, which has entitled it to the gratitude and imitation of neighbouring states, and remote nations. If elsewhere the reformed system has been attempted imperfectly, and failed of success, or if the plan of its authors has not yet been fully carried into effect, even in Pennsylvania, it cannot be admitted, nor does it follow, that "*the celebrated system of penitentiary discipline has been abandoned.*" Let us then ascertain what is strictly entitled to the character of the Pennsylvania plan, as suggested by its authors, and which has, as a principle, been progressively gaining strength here, from the time of its promulgation. The Prison Society was established in 1787. In that year, it made its first appeal to the legislature by memorial, which recommended several alterations in the penal statute of 1786, and in conclusion holds this language: "*Your petitioners wish the house would be pleased to revise the law, being fully convinced that punishment by more private, or*

even solitary labour, would more successfully tend to reclaim the unhappy objects," &c. Again:—in 1788, when the supreme executive council called on the society by resolution, for information concerning the state of the Prison, and solicited advice on the course necessary to be pursued, and the most salutary measures to be adopted, we find a full and able report to that body, closed with this memorable sentence; "On the whole, as a matter of the utmost moment to the well being, safety, and peace of society, as well as of the greatest importance to the criminals, the committee think it their duty to declare, that from a long and steady attention to the real practical state, as well as the theory of prisons, they are unanimously of opinion, that SOLITARY CONFINEMENT, and hard labour, and a total abstinence from spiritual liquors, will prove the most effectual means of reforming these unhappy creatures."

This report was adopted and signed on behalf of the society by William White,* Richard Wells, Benjamin Wynkoop, Thomas Wistar, Samuel Powel Griffiths, John Kaign, William Rogers, Charles Marshall, John Connelly, James Cooper, Caleb Lownes, Benjamin Thaw, Thomas Harrison, William Lippincott, and George Duffield. I give the names of the members of the committee, because among them are some of the most influential and efficient men of that honourable and beneficent association. Such was the inception of the penitentiary system of Pennsylvania, and if more distinct terms could have been employed to explain, or more conclusive testimony concerning the purposes and aims of its founders, can be required, I am utterly at a loss to conjecture what will be satisfactory or availing, to establish their intentions.

The great work in hand was no less novel than difficult, and of consequence the legislature bestowed much time and reflection upon the proposition, and in conjunction with the society endeavoured to mature a law, suited to the design. The condition of public affairs was unpropitious to the adoption of measures that would require large expenditures of money, as this country had then recently emerged from the protracted war of the revolution, and was labouring under the debility induced by that perilous struggle. Instead, therefore, of erecting a building, throughout adapted to the purpose, the legislature embraced the views of the prison society, so far as to provide in 1790, "that the commissioners of the county of Philadelphia, with the approbation of the Mayor and two Aldermen of the city of Philadelphia, and two Justices of the Court of Quarter Sessions for the county of Philadelphia, shall, as soon as conveniently may be, cause a suit-

* The venerable Bishop White, who for forty years has been President of the Society.

able number of *cells* to be constructed in the yard of the jail of the said county, each of which cells shall be six feet in width, eight feet in length, and nine feet in height, and shall be constructed of brick or stone, upon such plan as will best prevent danger from fire; and the said cells shall be separated from the common yard by walls of such height, as, without unnecessary exclusion of air and light, will prevent all external communication, for the purpose of confining therein the *more hardened and atrocious offenders*," &c. It also directs, that "*ordinary convicts shall be kept apart*, unless their employment does not admit of separation, in which case the keeper or his deputy must be present." In 1794 the legislature advanced another step towards carrying the plan into more complete effect, by directing, not only that "*the more hardened and atrocious offenders*" should be confined in the cells, but that *all* convicts should undergo that discipline. The words of the act are, "*every person convicted of the crimes last aforesaid (all offences excepting murder in the first degree) and who shall be confined in the jail and penitentiary house as aforesaid, shall be kept in the solitary cells thereof, on low and coarse diet, for such part, or portion, of his or her imprisonment, as the court in their sentence shall direct and appoint, provided that it be not more than one-half, nor less than one-twelfth part thereof.*" The same act further provides, that any person who shall commit an offence a *second time*, and be legally convicted thereof, shall be sentenced to undergo an imprisonment at hard labour *during life*, and shall be confined in the solitary cells at such times, and in such manner, *as the inspectors shall direct*. And it also enjoins that any person sentenced to hard labour and solitary confinement, who shall escape or be pardoned, and after his or her escape or pardon, shall be guilty of any offence (excepting murder in the first degree,) shall be sentenced to undergo an imprisonment for the term of "*twenty-five years, and shall be confined in the solitary cells at the discretion of the inspectors.*"—These statutes exhibit beyond contradiction the legislative judgment on solitary imprisonment, and they continue to this hour to be the law of the land. I trust I have fully shown that separate confinement has from the beginning been a prominent feature in the penal code of Pennsylvania; that the law declares that it shall be inflicted, not, as thy letter supposes, merely at night or for short terms for misconduct in prison, *but for months and years*, in succession, and, moreover, attended by greater privations, and under much less favourable circumstances, than it is contemplated to administer it in the new penitentiaries.

Clothed with the authority before quoted, provided with thirty cells, and having charge for several years in succession of an

average of rather more than one hundred convicts, the inspectors conducted the penitentiary with encouraging success. Not one-third of the criminals, however, could be accommodated at any one time in separate apartments, and the law required that *all* should undergo that discipline, according to the proportions fixed in their respective sentences. Alternate seclusion and association were, therefore, indispensable, as a general rule; but frequent exceptions occurred in the "*discretionary powers*" granted to the inspectors, in which the prisoner, immediately on admission, was conducted to his cell, and remained in it until his discharge from prison. *The cases thus treated were the only instances of reformation which continued throughout the lives of the individuals, as far as it could be traced and ascertained by the anxious and inquiring friends of the system.* If others were restored to lasting moral health, who associated, which I strongly doubt, the number must have been very few indeed, to have escaped the observation of the inspectors.

With the rapid augmentation of the population, crime increased, and convicted felons from all parts of the state were sent to the penitentiary, which soon became so crowded, as to render it impossible, as it was alleged by the inspectors, to employ the cells, excepting as a punishment for offences against the rules of the jail. The promiscuous intercourse of several hundred criminals, by day and night, old and young in age and vice, corrupt and corrupting, which, unhappily, for want of a prison adapted to solitary confinement, has been the case for many years past, cannot, I think, be denominated with any truth, nor be said to bear the least resemblance whatever, to "*the celebrated penitentiary system,*" which, I repeat, has never been abandoned. The essential ingredient in the genuine system is *solitary confinement*, and the inability to administer it, for the reasons I have assigned, is no argument against its utility or efficacy. All the evils incident to a community of culprits, have been often and touchingly described by writers on the subject. Those mischiefs and abominations were seen in all their affecting reality, and deeply lamented by the Prison Society, and it faithfully proclaimed them from time to time to the General Assembly. In 1818, the Society say, "they respectfully request the legislature to consider the propriety and expediency of erecting penitentiaries in suitable parts of the state, for the more effectual employment and separation of the prisoners, and of *proving the efficacy of solitude on the morals of those unhappy objects.*" In the same year, replying to a letter of the committee in London for the improvement of prison discipline, this language is used: "From the experience already acquired on this important subject, and especially during the first few years, when the exertions of the

Society were more actively employed in the direction of the system, we feel no hesitation in declaring, that the deficiencies which may have appeared, *are not to be ascribed to the system itself*, but to the difficulties which have occurred in reducing it to practice. *Amongst the chief of these has been, the impracticability of confining the convicts to solitary labour.*" It would not be difficult to adduce much more evidence of the same character, but let the following extracts from the Society's last appeal to the Legislature in 1821, suffice to vindicate the purity and consistency of its purposes, and arrest any further representations which may induce the world to believe, conformably with thy ideas, that *solitary* confinement was not an original and fundamental principle of the system.

"It is now nearly forty years since your memorialists associated for the purpose of alleviating the miseries of public prisons, as well as for procuring the melioration of the penal code of Pennsylvania, as far as these effects might be produced through their influence.

In the performance of the duties which they believed to be required of them by the dictates of Christian benevolence, and the obligations of humanity, they investigated the conduct and regulations of the jail, and likewise the effects of those degrading and sanguinary punishments, which were at that period inflicted by the laws of this Commonwealth. The result of these examinations was a full conviction, that not only the police of the prison was faulty, but the penalties of the law were such as to frustrate the great ends of punishment, by rendering offenders inimical, instead of restoring them to usefulness in society.

"With these impressions, alterations in the modes of punishment, and improvements in prison discipline, were from time to time recommended to the Legislature, by whose authority many changes were adopted, and many defects remedied.

"These reforms, from the nature of existing circumstances, were, however, of comparatively limited extent, but, as far as the trial could be made, beneficial consequences were experienced.

"At the time of making the change in our penal code, substituting solitude and hard labour, for sanguinary punishments, the experiment was begun in the county jail of Philadelphia, rather than the execution of the laws should be deferred to a distant period, when a suitable prison might be erected. Under all the inconveniences then subsisting, the effects produced were such as to warrant a belief that the plan would answer the most sanguine wishes of its friends, if it could be properly tried. But the construction of that prison, and its crowded condition, being the only penitentiary used for all the convicts of the state, leave

but slender hopes of the accomplishment of the humane intentions of the Legislature.

“Your memorialists believe, that they discover in the recent measures of the Commonwealth, a promise, which will fulfil the designs of benevolence in this respect. The edifice now in progress at Pittsburg for the reception of prisoners, constructed upon a plan adapted to strict solitary confinement, will go far towards accomplishing this great purpose; and your memorialists are induced to hope, that the same enlightened policy which dictated the erection of a state prison in the western, will provide for the establishment of a similar one in the eastern part of the state.

“Reasons of the most serious and substantial nature might be urged, to show the absolute necessity which exists for a penitentiary in the city and county of Philadelphia, whether we regard the security of society, or the restoration of the offenders against its laws. It will not be necessary here to recite the alarming proofs which might be adduced in support of their opinions, but refer to the documents herewith furnished, which exhibit the actual condition of the prison.

“Your memorialists, therefore, respectfully request, that you will be pleased to take the subject under your serious consideration, and if you judge it right, to pass a law, for the erection of a penitentiary for the eastern district of the state, in which the benefits of solitude and hard labour may be fairly and effectually proved.

“Signed by order and on behalf of the Society.

WILLIAM WHITE, President.
 WILLIAM ROGERS, } Vice Presidents.
 THOMAS WISTAR, }
 NICHOLAS COLLIN,
 SAMUEL POWEL GRIFFITTS.”

Neither the advocates of separate confinement, nor the Legislature, are answerable for the language quoted by thee, as used in a single paragraph of the report of a committee made to the senate in 1821, upon which much stress is laid in thy second letter. If that sentiment were law, and therefore the act of the Representatives of the people, binding in the extreme of its letter, and spirit, (which is not the fact,) it might have incurred thy displeasure, and produced the lecture which the writer of that sentence may possibly deserve, but which the citizens of my native state will not admit to be applicable to themselves. That they should adopt measures of cruelty which “*the despotic government of Austria may resort to,*” measures, “*which have already astonished all Europe,*” and, “*if proposed to be established in France or England, would be rejected with disgust,*” are charges of forgetfulness of the ends of government,

and deplorable transgressions against humanity, of which Pennsylvanians never have been, and I trust never will be, guilty. This system of prison discipline, "*unblushingly brought forward*," startling the nations of the old world, and which in thy opinion is to consign its authors to the reprobation of mankind, is substantially the same as that contemplated in England in the year 1779, when an act was drawn up under the direction of *Sir William Blackstone, with the advice and concurrence of the illustrious Howard!*

The preamble which determines the character of that act, is in these words: "Whereas, if many offenders convicted of crimes for which transportation has been usually inflicted, were ordered to *solitary imprisonment*, accompanied by well regulated labour, and religious instruction, it might be the means, under Providence, not only of deterring others from the commission of like crimes, but also of reforming the individuals," &c. Unhappily, this merciful project was not carried into effect. If it had been, who can calculate the number and value of human lives, which would have been saved in Great Britain during the last half century, but which were sacrificed on the gibbet for offences, that in Pennsylvania are only liable to mild correction.

It is to be regretted, that the imposing and respectable name of *Lafayette* has been brought to the task of rendering unpopular the *separate* confinement of criminals, because on this subject he is not believed to be an unprejudiced arbiter, owing to the wanton cruelties inflicted upon him in the *dungeons* of Europe, for causes utterly dissimilar, and under circumstances wholly unlike those necessary for *the correction and reform of convicts*. A conversation which I held with that distinguished individual on this topic, convinced me, that the intense sensibility excited by his own sufferings, really unfitted his mind for discriminating, and deciding the question, on its own merits. In a letter, however, which he addressed a few months ago to my venerable friend Judge Peters, he generously says—"In the publication I have alluded to, I see my opinion relative to your new penitentiary, has been divested of the expressions of affectionate regard for the directors of that experiment, of my high sense of their admirable philanthropy, *of the superiority of their knowledge, and general experience in matters of that kind*, which have ever accompanied my own observations. I regret it, and beg you to express my feelings to them. Yet I cannot help persisting in my wishes that the enlightened, humane planners and managers of the new penitentiary, instead of making solitary confinement the basis of this system, might employ it only to separate prisoners at night, and to punish delinquents."

It is no part of my business, nor do I feel inclined, to mix this discussion with the numerous points in controversy between thyself and Stephen Allen. The Auburn scheme of penitentiary discipline is laid on principles, and sustained by practices, which the advocates of the Pennsylvania system cannot approve, and I feel confident that the citizens of this state will never adopt them. Thy New York correspondent has, however, with a view to uphold their favourite plan of treatment, and prove its mildness, in comparison with that proposed in our New Penitentiaries, quoted from my first letter addressed to thyself, "that convicts for acts of violence committed in the Philadelphia prison, have been confined in the cells for six, nine, and twelve months, generally in irons, and always on a low diet," and then proceeds to ask whether this is to be preferred to whipping? When follows thy remark, "*What answer you, sir, will give to this question, is not for me to conjecture.*" For a correct understanding of the use of the fact, now so triumphantly exhibited, I must refer to the letter from which it is extracted, where it will be seen, among other considerations, on separate confinement, I endeavoured to combat an opinion sometimes urged, that melancholy, and madness, and even suicide, would be the inevitable consequence of such imprisonment. But it cannot be shown, that I approved of putting prisoners in irons, directing for them a low diet, and consigning them to cells under those circumstances, for six, nine, and twelve months—far different are my sentiments on this subject. My design was merely to show, that under the severest application of solitude in the cells of the old jail, alienation of mind had not occurred.

Whatever may be the opinions entertained of the plan of separate confinement,—if through mistaken tenderness of feeling, some shrink from the adoption of it, and others, with imperfect notions of its character, condemn it as a penalty affecting too seriously the rights of our species, I entirely believe, that the best motives conduct them to their decision, however much it may be lamented, that they do not perceive its real merits.

It is nevertheless an unshaken truth, that a community of prisoners is to the last degree to be deplored. No matter how well the theory of jail discipline may be devised, nor how rigidly it may be administered, human contrivance must fail, with *associated guilt*, to reform criminals, and to prevent crime by the fear of such impotent chastisement.

Intercourse in prison defeats the claims of justice, and the wholesome ends of punishment—it degrades, by exposing culprits to the observation of each other, and proclaims the common infamy of their fallen condition—it makes, in reality, little, if any discrimination between offences—it banishes hope—it hardens

the heart, and is calculated to quench the last spark of desire for amendment of life. For these reasons it ought to be regarded as the most cruel and certain exercise of power, to increase and perpetuate every form of wickedness and misery.

With great respect I remain, &c.

ROBERTS VAUX.

Philadelphia, 9mo. 21, 1827.